

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA )  
vs. ) Criminal Action  
HERZZON SANDOVAL, ) No. 15-10338-FDS  
EDWIN GUZMAN, )  
CESAR MARTINEZ, )  
ERICK ARGUETA LARIOS, )  
Defendants )

BEFORE: THE HONORABLE F. DENNIS SAYLOR, IV

JURY TRIAL DAY 8

John Joseph Moakley United States Courthouse  
Courtroom No. 2  
1 Courthouse Way  
Boston, MA 02210

February 8, 2018  
8:37 a.m.

Valerie A. O'Hara  
Official Court Reporter  
John Joseph Moakley United States Courthouse  
1 Courthouse Way, Room 3204  
Boston, MA 02210  
E-mail: vaohara@gmail.com

1 APPEARANCES:

2 For The United States:

3 United States Attorney's Office, by CHRISTOPHER J. POHL,  
4 ASSISTANT UNITED STATES ATTORNEY, and KELLY BEGG LAWRENCE,  
5 ASSISTANT UNITED STATES ATTORNEY, 1 Courthouse Way, Suite 9200,  
6 Boston, Massachusetts 02110;

7 For the Defendant Herzzon Sandoval:

8 Foley Hoag LLP, by MARTIN F. MURPHY, ESQ. and  
9 MADELEINE K. RODRIGUEZ, ATTORNEY,  
10 155 Seaport Boulevard, Boston, Massachusetts 02210;

11 For the Defendant Edwin Guzman:

12 Lawson & Weitzen, by SCOTT P. LOPEZ, ESQ.,  
13 88 Black Falcon Avenue, Suite 345, Boston, Massachusetts 02210

14 For the Defendant Erick Arueta Larios:

15 THOMAS J. IOVIENO, ESQ., 345 Neponset Street  
16 Canton, MA 02021;

17 For the Defendant Cesar Martinez:

18 STANLEY W. NORKUNAS, ESQ., 11 Kearney Square,  
19 Howe Building, Suite 202, Lowell, Massachusetts 01852.

20 ROBERT M. SALTZMAN, ESQ., 1 Central Street, Suite 5,  
21 Stoneham, Massachusetts 02180.

22 ALSO PRESENT: Gabriel Haddad, Spanish Interpreter  
23 Carrie Lilley, Spanish Interpreter  
24  
25

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

I N D E XWITNESSDIRECTCROSSREDIRECTRECROSS

By Mr. Pohl

18

EXHIBITSFOR I.D.IN EVIDENCE

25.1 through 25.4

34

26

44

28

69

29

74

30.1 and 30.2

77

32.3

96

33.1 through 33.5

98

50

58

74.1 through 74.3

56

103

85

106

87

1 PROCEEDINGS

2 THE CLERK: All rise. Thank you. You may be seated.  
3 Court is now back in session.

4 THE COURT: All right.

5 MR. POHL: Good morning, your Honor.

6 THE COURT: I'm going to start to make a ruling that  
7 came up at the end of the day yesterday, which is basically the  
8 evidentiary question of, as I understand it, after they are  
9 arrested, and I apologize for using the street names, Muerto  
08:37AM 10 and Lobo are discussing the fact that Pelon was the only person  
11 with Lobo when he was arrested.

12 Lobo believed that Pelon had been cooperating and  
13 asked for a green light on Pelon, and Casper says no, we need  
14 more evidence, and there's some time gap before Lobo telling  
15 Muerto this because Muerto was friends with Pelon, and they  
16 thought he might interfere or somehow might be a problem.

17 So, to begin, there are many layers to this, but to  
18 begin, of course, to the extent it's offered against Lobo, it's  
19 a statement of a party opponent, and at least with regard to  
08:37AM 20 one layer of hearsay, it's a statement of a party opponent  
21 against Casper.

22 It's in part a statement of intent or belief, and,  
23 therefore, outside the hearsay rules to the extent Lobo is  
24 talking about what he believed or what he intended to do or  
25 planned to do or wanted to do, they are almost certainly

1 statements against penal interest.

2 Lobo and Casper are unavailable because they can't be  
3 compelled to testify, and the subject matter, which is the  
4 possible murder of a witness or a murder of a person anyway is  
5 clearly something that would expose a person to criminal  
6 penalties, but the core issue, I think, is co-conspirator  
7 hearsay.

8 As I see it, it goes like this: The conspiracy is  
9 basically conducting the affairs of MS-13. It's an ongoing  
08:38AM 10 conspiracy. It still exists. It did not end with the arrest.  
11 There has been testimony, for example, that the leadership of  
12 MS-13 is in prison in El Salvador and continues to conduct the  
13 affairs of the gang even though they're in prison.

14 Part of the conspiracy, according to the evidence, is  
15 the murder or threatened murder of cooperators, which obviously  
16 further the interests of the conspiracy. The statements here  
17 kind of have three parts to them. There's a proposal, I want  
18 to kill Pelon, there's a response, we need more evidence in  
19 order to do that. Implicit in that is we need more evidence  
08:39AM 20 according to the rules of MS-13, and the third layer is I  
21 didn't tell you, Muerto, because I wasn't sure about you.

22 They are, it is true, describing the events of the  
23 relatively recent past, in other words, it's not happening in  
24 realtime. In other words, this is saying what we are thinking  
25 or talking about at some point in the recent past, but it's

1 clearly statements about the affairs of MS-13.

2 It certainly informs Muerto about gang affairs and  
3 keeps him current, even though he has been arrested, and it  
4 certainly reinforces to Muerto that this is how we handled  
5 cooperators, and it's an implicit reminder or threat to him as  
6 to what may happen to him, as with any cooperator.

7 Arguably, it is mere chatter, mere bravado, simply  
8 being macho. Arguably, as Mr. Murphy suggested, it's a  
9 statement of looking back, this is how we got to where we are,  
08:40AM 10 and this is how we could have prevented it had things gone  
11 differently.

12 I think those are reasonable arguments under the  
13 circumstances, but this is not a proof beyond a reasonable  
14 doubt standard, it's a preponderance of the evidence standard,  
15 and it seems to me that the statements were clearly made by  
16 co-conspirators during the course of the conspiracy.

17 It's perhaps a closer call whether they were in  
18 furtherance of the conspiracy, but I think the standard has  
19 been satisfied, and, therefore, I will admit the statements,  
08:41AM 20 and that is admitted against all four defendants as  
21 co-conspirator hearsay subject to a *Petroziello* ruling, of  
22 course, but also to the extent relevant, it's a statement of  
23 intent, statement against penal interest or statement of a  
24 party opponent.

25 All right. What else do we have to talk about?

1 Mr. Murphy.

2 MR. MURPHY: Yes, your Honor, with respect to that  
3 ruling, I would only ask that the record reflect that we'll see  
4 how the testimony goes.

5 THE COURT: Yes, of course, this is all contingent on  
6 testimony being what I expect it to be.

7 MR. MURPHY: Muerto against a continued use, I expect  
8 he will testify that Mr. Sandoval's statement was no before  
9 there was anything about needing additional evidence, and I  
08:42AM 10 don't think there will be any evidence that anyone conducted  
11 any further investigation of whether Pelon was informed between  
12 the date of that statement, whenever it is alleged to have been  
13 made and the end of this.

14 THE COURT: All right.

15 MR. MURPHY: I just say that for the record,, your  
16 Honor.

17 THE COURT: And, again, I think that that's relevant  
18 cross-examination should the testimony play out that way.

19 MR. MURPHY: So, there are two matters that I think we  
08:42AM 20 have brought before the Court this morning.

21 THE COURT: Yes.

22 MR. MURPHY: The first relates to the renewal of the  
23 motion for *Jencks Act* material relating to Special Agent Wood.

24 THE COURT: Yes.

25 MR. MURPHY: Special Agent Wood testified about what

1 he described as the Threat Assessment.

2 THE COURT: Yes.

3 MR. MURPHY: Both in the first trial and on this one  
4 on direct examination. I asked for the Threat Assessment in  
5 the run-up to this trial. The government did not produce any  
6 follow-up. He testified again about it on direct examination  
7 on this trial. I think it's more *Jencks Act* material.

8 MR. POHL: Thank you, your Honor. Well, let me just  
9 say this. We're certainly not going to get to that today. I  
08:43AM 10 did contact after Mr. Murphy filed the motion, contact OEO in  
11 Washington to get additional input from them on how this matter  
12 has been handled in the past.

13 I got a response back at the end of the day yesterday  
14 that sometimes the case did not perfectly answer what I asked  
15 for, so on the Threat Assessment, I guess what I'd say is maybe  
16 we can report back tomorrow after I've had time after Court  
17 today to speak with them.

18 What I have been told, and, you know, in my review of  
19 the information that's been produced in other similar cases of  
08:44AM 20 that, it's not -- Special Agent Wood isn't adopting any of the  
21 information in that report, it's simply, you know, often a  
22 biographical sort of compilation of the number of people that  
23 would be protected, the general information about the case, and  
24 so I don't agree that it's necessarily discoverable, but,  
25 again, I think I wish I had an answer today because I think



1 we'd like to be done with it once and for all. It might be  
2 better for me to address it tomorrow.

3 THE COURT: I may review it in camera. It's not clear  
4 to me what it is, and, obviously, to be Jencks, it either has  
5 to be his statement, he has to approve it or adopt it, and I  
6 don't even know quite what it is or who signed it or who wrote  
7 it or any of that.

8 MR. POHL: If that's the answer, then I'll have it  
9 brought down today so you can review it.

08:45AM 10 THE COURT: All right. That's Number 1940. I'm going  
11 to leave that pending. Mr. Norkunas moved to join in that,  
12 which I'll allow, 1941.

13 MR. NORKUNAS: Thank you, your Honor.

14 MR. IOVIENO: I would also move to join in that.

15 THE COURT: All right. That will be granted as well.

16 MR. MURPHY: Thank you, your Honor. We've also filed  
17 a motion with respect to CW-2, who's street name is Clacker.

18 THE COURT: Yes.

19 MR. MURPHY: Your Honor, CW-2 was called as a witness  
08:45AM 20 by the government in an earlier trial in this matter. He was  
21 on the government's witness list in this trial. Our witness  
22 list, I asked, requested permission from the Court to call any  
23 witness who was on the government's witness list, so I think  
24 he's on witness list.

25 We received disclosures in the run-up to the trial

1 about things that CW-2 said that were slightly inconsistent  
2 with what he said previously, and we expected him to be a trial  
3 witness.

4 Based on some statements that Ms. Lawrence said at  
5 sidebar, I believe, I could have my dates wrong, beginning on  
6 last Friday and again on Monday, I inquired, I think, on  
7 Tuesday about whether he was, in fact, coming, and the  
8 government confirmed that he was not coming, at least at the  
9 invitation of the government.

08:46AM 10 He's in the witness protection program. We have  
11 effectively no way to find out where he is or to ask that the  
12 Court issue a subpoena for him, so we would ask that the Court  
13 direct that the government make him available should we choose  
14 to call him, and I think it would be my current expectation  
15 that we would, your Honor.

16 His testimony, your Honor, is from our perspective  
17 critical to the defense of this case because, Number 1, he was  
18 actually, unlike some of the other, unlike Special Agent Wood,  
19 he was an MS-13 associate at the time of these events in the  
08:47AM 20 Boston area, and I think with certain respects his testimony  
21 will shed important light on the way that MS-13 in the Boston  
22 area operates, in particular, your Honor, he testified in the  
23 grand jury consistent with his trial testimony in the first  
24 trial that people who are affiliates or associates or members  
25 of MS-13 can commit crimes essentially as freelancers, so

1 they're members of MS-13, but not every crime they commit is an  
2 enterprise crime, and he described in particular a series of  
3 armed robberies that he committed with a number of other MS-13  
4 members from several cliques of gypsy cab drivers in the  
5 Chelsea area in the winter of 2014-2015.

6 When Special Agent Wood was on that stand, I tried to  
7 bring out this idea that MS-13 members can freelance, that is,  
8 commit crimes that are not at the direction of the clique.

9 Special Agent Wood essentially said no, that's not  
08:48AM 10 true and acknowledged that he hadn't read Clacker's, CW-2's,  
11 grand jury testimony. I think given the way the evidence is  
12 coming in in this case, your Honor, you know, for example, the  
13 drug protection details, they are, as I understand it, the  
14 government alleges that they are essentially crimes of the  
15 enterprise that Mr. Sandoval conspired to commit, using that  
16 terminology.

17 I think we should be allowed to argue, we will argue  
18 that they were not crimes of the enterprise but freelance  
19 crimes that Mr. Sandoval did not agree to or approve sanction  
08:49AM 20 and did not really -- were not part of a pattern of any  
21 activity by MS-13. The fact that those things happened, having  
22 been denied by Special Agent Wood, would be affirmed by CW-2,  
23 Clacker.

24 THE COURT: All right. Let me sort of cut to the  
25 chase. It seems to me because the defendants have a right to

1 call witnesses because they have a right to nationwide service  
2 of process, that if somebody is in the witness security  
3 program, the government has to either tell the defense where he  
4 is or produce him on reasonable request for trial. I think  
5 it's really kind of as simple as that.

6 I know the defense has asked for the opportunity to  
7 talk to the person beforehand. If there's a case saying that  
8 you have a right to do that, I'd be interested in reading it.  
9 It's not clear to me that you do, but certainly you have a  
08:49AM 10 right to have him produced as a witness, and that touchstone  
11 will be reasonableness,, in other words, I don't know where he  
12 is, I don't know what mechanics it requires to get him here,  
13 but on reasonable request, I'll order that he -- well, I will  
14 now order that he be produced on reasonable grounds.

15 MR. POHL: Sure. You've now entered the order, so I  
16 won't ask you to take it back, but there was no need for the  
17 order. The logistics of the production is not the issue as far  
18 as the government is concerned. That wasn't the issue with  
19 CW-1, for that matter, either whether he's in the witness  
08:50AM 20 protection or not.

21 The issue that as we saw it, your Honor, is that  
22 Mr. Murphy sent over as examples of the type of evidence that  
23 he wants to elicit was all of the grand jury testimony  
24 concerning Clacker's street robberies with, you know, and this  
25 is really another, you know, attempt at network, it's not a

1 back door way, it's a full front way of attempting to get in  
2 evidence concerning CW-1's participation in otherwise illegal  
3 activity.

4 So we didn't call Clacker and drop him from the  
5 witness list because of the Court's ruling, which I'm fully in  
6 accord with, and I think it's been sort of consistently held  
7 throughout for the last few days, which is we can't elicit a  
8 lot of the additional evidence that CW-1 gathered in this  
9 investigation that tied up murders led to recovery of  
08:51AM 10 significance evidence saved Clacker's life, and the defense  
11 can't impeach the credibility of a witness that the government  
12 doesn't intend to call, so the production issue aside, that's  
13 not an issue.

14 I'll have to talk about it with OEO about the  
15 logistics.

16 THE COURT: Okay. I'm making no ruling on the  
17 relevance or admissibility of any of this. You know, I'm  
18 obviously hesitant to cut off, you know, before I've even heard  
19 it a defense line of examination. I agree with the general  
08:52AM 20 proposition that you can't call CW-2 for the purpose of  
21 impeaching CW-1 because I don't think that's proper, but --

22 MR. POHL: I understand.

23 THE COURT: -- I'm not in a position to make a ruling  
24 really on anything other than to make some broad pronouncements  
25 that may not be useful to anyone.

1 MR. POHL: Understood. I simply wanted you to note,  
2 A, why we had decided not to call him in our case in chief,  
3 and, B, to flag that for discussion at the appropriate time, so  
4 I'll work with Mr. Murphy to see where we are next week in  
5 terms of whether they truly intend to call CW-2, and we will  
6 work with the marshals. I think I would need a subpoena, and  
7 we would accept the service of process for the subpoena for the  
8 purposes of sending it to Washington, but I'll need a subpoena  
9 for that. Thank you.

08:52AM 10 MR. MURPHY: And I'll speak with Mr. Pohl, but I think  
11 the communications from our end have always been, you know,  
12 unless we change our mind, we do want CW-1. This is the first  
13 I've heard about the subpoena request, but I can certainly talk  
14 with Mr. Pohl about that.

15 THE COURT: You know, if this is what OEO or somebody  
16 wants, you know, subpoenas don't take long to type up. I  
17 assume you can do that.

18 All right. The other pending motion is defendant's  
19 motion to exclude uncharged acts concerning CW-7. We might as  
08:53AM 20 well take that up now even if we aren't going to get to it.  
21 Remind me, whose motion is it?

22 MR. LOPEZ: It's my motion, your Honor. Your Honor,  
23 on the eve of trial, actually four days before trial, I became  
24 aware through a disclosure from the government that Tigre or  
25 Cooperating Witness Number 7 now claims that some time, some

1 unspecified time in 2003 or 2004 that Mr. Guzman committed an  
2 attempted murder or I believe admitted to, excuse me, he claims  
3 that he phrased it -- it was phrased like this, "CW-7 also  
4 advised that Playa participated in two attempted murders of  
5 rival gang members, one in 2003 or 2004 involving a machete  
6 attack, which caused Playa to get the second word in ESLs and  
7 one in Somerville with Tecolote, no time frame, where they  
8 stabbed the guy and left his intestines hanging out."

9 Putting aside the fact that it's totally  
08:55AM 10 uncorroborated and it's a late disclosure and it hasn't come up  
11 in the four proffer sessions that led to him being a  
12 cooperating witness, it lacks such specificity that it's  
13 impossible to effectively cross-examine something that hasn't  
14 been corroborated by the government.

15 It's just so unduly prejudicial to the defense that on  
16 the eve of trial, this corroborating witness who has received  
17 promises from the government would come up with this  
18 spectacular story which, oh, by the way, provides the two  
19 racketeering acts that the government's trying to prove that  
08:55AM 20 Mr. Guzman agreed to.

21 I just think that under 403, it should be --

22 THE COURT: I assume these weren't charged, charged  
23 racketeering acts?

24 MR. LOPEZ: They weren't charged, your Honor, and the  
25 government's position is that they're either not 404(b), or if

1 they are 404(b), they're especially relevant in terms of his  
2 knowledge of the goals of the conspiracy, and then they just,  
3 they don't even make an argument under 403, they just make a  
4 false statement that it's not unduly prejudicial.

5 THE COURT: Ms. Lawrence.

6 MS. LAWRENCE: Your Honor, it's our view that these  
7 are not 404(b) type -- this is not 404(b) information because  
8 it goes right to the heart of the conspiracy, the fact that  
9 Defendant Guzman did participate, if that is the testimony,  
08:56AM 10 that's what we expect the testimony to be, is exactly the kind  
11 of conduct that he's charged with knowledge of in this  
12 conspiracy, so we view this as part and parcel of the charge in  
13 this case.

14 As to the other issues that the defendant is raising,  
15 I think it goes to the weight of the statement, not its  
16 admissibility in both respects, and the statement regarding the  
17 attempted murder with Tecolote was referenced in a prior  
18 proffer, so that was not late disclosed, and with respect to --

19 THE COURT: When was it referred to in the prior  
08:57AM 20 proffer? When was it disclosed to defense counsel?

21 MS. LAWRENCE: It was disclosed to defense counsel,  
22 I'm not sure of the date, but it was part of the proffer that  
23 happened in 2016, so it's been available to the defense for  
24 quite a long time.

25 THE COURT: Okay. I'm not going to make my decision



1 now. Let me think about this, but I guess there's two pieces  
2 of it. I don't see it as 404(b) evidence. It seems to me the  
3 two issues are whether it is an unfairly late disclosure, and I  
4 think the real issue is Rule 403.

5 MR. LOPEZ: Your Honor, Ms. Lawrence is correct, it  
6 was previously disclosed. The second one was previously  
7 disclosed in a proffer, however --

8 THE COURT: The second one meaning the Tecolote?

9 MR. LOPEZ: Yes, the Tecolote in Somerville.

08:57AM 10 THE COURT: I'm going to want to know those facts,  
11 what was disclosed when, so I can think about the whole issue,  
12 so I may need a supplement there.

13 MR. LOPEZ: However, with respect to that, the  
14 government has had time to corroborate that, and there's been  
15 corroboration whatsoever, no police report, nothing.

16 THE COURT: Okay. Which, again, I think it's part of  
17 the 403 argument.

18 MR. LOPEZ: Yes, your Honor.

19 THE COURT: I want to give that some thought. Let's  
08:58AM 20 bring out the witness, and I'm going to have Ms. Pezzarossi  
21 check on the jury.

22 MR. MURPHY: May I disappear for three minutes?

23 THE COURT: A juror called and apparently said she's  
24 less than 10 minutes away, so we'll give her the 10 minutes, I  
25 guess.

1 THE CLERK: All rise.

2 ( A recess was taken.)

3 THE CLERK: All rise for the jury.

4 (JURORS ENTERED THE COURTROOM.)

5 THE CLERK: Thank you. You may be seated. Court is  
6 now back in session.

7 THE COURT: Good morning, everyone. It looks like  
8 we're ready to resume. Mr. Pohl.

9 You understand that you're still under oath?

09:21AM 10 THE WITNESS: Yes.

11 MR. POHL: Thank you, your Honor.

12 JOSE HERNANDEZ MIGUEL, RESUMED

13 DIRECT EXAMINATION, CONTINUED

14 BY MR. POHL:

15 Q. Good morning, Mr. Hernandez Miguel.

16 A. Good morning.

17 Q. When we left off yesterday, you were talking about the  
18 fact that Lobo had been arrested with a gun. Do you remember  
19 that?

09:22AM 20 A. Yes.

21 Q. And did you and other members of ESLS talk about that fact  
22 at a clique meeting?

23 A. Yes.

24 MR. POHL: Jurors, can I ask you to pull out your  
25 transcript binders. Flip to 23. Thank you.

1 Q. All right. Mr. Hernandez Miguel, I'm going to ask you --  
2 I'm going to read some portions of the transcript, and I'm  
3 going to ask you some questions about it. All right?

4 A. Okay.

5 Q. Casper: "Come closer. We're going to talk about an issue  
6 now. That's why we are meeting. I'm going to request that  
7 when we speak to one another that we do it respectfully, that  
8 we choose our words carefully so that we don't offend anyone.  
9 We are all dogs, dude, and it is better to lower our ears when  
09:23AM 10 we talk to another dog so that we don't bite one another."

11 "So the problem is this: I got a call. Playa called  
12 me, dudes, that Lobo had been arrested and he was in jail. As  
13 always, we, when there's a large bill to pay, homies, we have  
14 always contributed \$100 each to help the dude out somehow so  
15 that he can pay or do something about the problem that he got  
16 into. We have done that for several dudes that have gotten in  
17 trouble, but Lobo's circumstances has been a little different  
18 this time. So, dudes, I gave the \$100, and supposedly we were  
19 all going to do the same. Then there are some dudes I want to  
09:24AM 20 hear from first before giving it officially, so let's think  
21 about it."

22 "All the dudes want to hear your version. We will  
23 move forward, so tell me -- so tell what happened so that  
24 everybody can hear you."

25 Lobo: "I was at Casa Mariachi. I went to eat from

1 work."

2 Casper: "One more thing. Before you begin, watch out  
3 that your mind doesn't leave you again. Think about what you  
4 are going to say carefully so that we don't catch you in a  
5 lie."

6 Muerto: "Tell the truth, dude. Don't tell lies  
7 because the dudes here already know and one has to tell the  
8 truth."

9 Casper: "Go on."

09:25AM 10 Lobo: "So I went to eat there, dude. First I went  
11 in. The two guys that I told you about were there. The one  
12 from (unintelligible) that I told you about. I went outside, I  
13 ordered the food, and I went to the truck and I put the gun  
14 here in my back."

15 Casper: "I'm going to explain to the dudes. This  
16 dude -- I don't remember exactly with whom he was that day, but  
17 got into a fight with some boys that supposedly Chico and you  
18 ended up fighting by a restaurant. Supposedly they had flashed  
19 the chavalas or told you guys to fuck yourselves. I don't know  
09:25AM 20 what exact words were spoken."

21 Let me stop you right there. Mr. Hernandez Miguel, I  
22 think you testified yesterday about an incident that Lobo had  
23 had before he was given the clique gun?

24 A. I don't understand the question.

25 Q. Well, let me just ask the question this way. Why was Lobo

1 given the clique gun before he was arrested with it?

2 MR. IOVIENO: Objection, your Honor.

3 THE COURT: I'll allow the witness to testify as to  
4 what he saw or heard. Let me hear the answer.

5 A. Because the chavalas had fired shots at him while he was  
6 coming out of a restaurant in Everett, and while he was in the  
7 car, he had been fired at is what Lobo said. And so the clique  
8 gun was given to Lobo to have because if the chavalas had fired  
9 at him one time, that meant that they knew him.

09:27AM 10 THE COURT: So, again, his statements about the guns  
11 being fired at him are admitted not for the truth of the  
12 content but to prove that that statement was made by Lobo for  
13 whatever weight the jury chooses to give it.

14 MR. IOVIENO: Your Honor, just so the record is clear,  
15 my objection is also in that vein, too, but also based on a  
16 prior motion.

17 THE COURT: Okay. Sustained. I'm sorry, overruled,  
18 overruled.

19 MR. POHL: Thank you.

09:27AM 20 Q. I'm going to continue reading the transcript now. All  
21 right.

22 Lobo: "Yes. We started beating them by Su Casa  
23 Restaurant so I went to get the gun and put it in my pocket. I  
24 was wearing a long sweatshirt and so you couldn't notice it.  
25 No one saw it. I'm sure no one saw me with that. I was going

1 to give \$100 to Rina that I was lending her for her mother. So  
2 I went in there, ate, or I was going to eat when the guys got  
3 scared and left. When they ran away, Pelon arrived. I had  
4 already eaten, Pelon arrived and he ate, then the homie left.  
5 A friend of Rina's had arrived while Pelon was still there.  
6 Isn't that right?"

7 CW-1: "Yes."

8 Lobo: "So I left. Pelon came with me to the bathroom  
9 and I showed the bag to Pelon, too, and I left. When Pelon  
09:28AM 10 left, I left 10 minutes later to put the bag back in the  
11 vehicle and there were some detectives there already next to  
12 the truck going like this, three guys were there."

13 Casper: "Did they open the car?"

14 Lobo: "Around it."

15 Casper: "But did they open it?"

16 Lobo: "That was later when they took me away. They  
17 opened the car, so I went back. There was a man shoveling snow  
18 digging out a car when I saw that one was coming towards me and  
19 one from the other side. I did this with the magazine. I did  
09:29AM 20 this with it, and it fell like this to the side in the snow. I  
21 bent over to look for the gun like this, and the old man told  
22 me where the gun had fallen, otherwise they wouldn't have  
23 gotten that gun."

24 Casper: "Now I want to say something. We have always  
25 said at all the meetings that we all know that nothing can be

1 done at restaurants with a gun. I know that that -- I know  
2 that that you wouldn't have fired it inside anyway, but why did  
3 you go get it? Why did you have the gun inside the  
4 restaurant?"

5 Lobo: "That was my fuck-up. I thought to myself if  
6 that fucking (unintelligible) I was considering going upstairs  
7 so that when they would look, I would be far away.

8 And if they the (unintelligible) I was going to shoot  
9 them. I wasn't going to wait for the sons of bitches to beat  
09:30AM 10 me up, so that's what happened, and they took it from me, and  
11 that's what happened."

12 All right. Let's stop right there. The transcript  
13 goes on, but did you, Mr. Hernandez Miguel, ever talk about  
14 this incident with Lobo and Pelon at the restaurant after this  
15 clique meeting?

16 A. I don't remember.

17 Q. Well, let me ask you this. Did you ever speak about it  
18 with Lobo himself?

19 A. Yes.

09:31AM 20 Q. Okay. All right. That's the conversation I'd like to ask  
21 you about now. And when did you have a conversation with Lobo  
22 about this incident with the gun at the restaurant?

23 A. In Wyatt, when we were arrested.

24 Q. Okay. Now, what did Lobo say to you about this incident  
25 when you spoke to him about it?

1 MR. MURPHY: Objection, your Honor.

2 THE COURT: Overruled.

3 MR. MURPHY: May we have a continuing line of  
4 objection?

5 THE COURT: Yes.

6 MR. MURPHY: Thank you, your Honor.

7 Q. What did Lobo say to you after you had been arrested in  
8 this case?

9 A. That he was certain that it was Pelon who had snitched on  
09:32AM 10 him in Casa Mariachi because only Pelon had seen the gun while  
11 they were in Casa Mariachi and that he had seen Pelon go  
12 outside with the telephone. And then when he tried to go out,  
13 the detectives were already outside. And he told me that since  
14 he was sure that Pelon was a snitch, he had requested the green  
15 light to kill Pelon.

16 Q. Stop right there. What's a green light?

17 A. Well, that's like when there's a snitch or someone  
18 disrespects the clique, a green light is like an order to kill  
19 him.

09:33AM 20 Q. Okay. Who issues a green light?

21 MR. MURPHY: Objection, your Honor.

22 THE COURT: I'll allow him to testify as to his  
23 understanding. Overruled.

24 A. The runners.

25 Q. And the runner of your clique was?



1 A. Casper and Playa.

2 Q. Okay. So, what -- so Lobo told you -- after Lobo said  
3 that, did he discuss why he wanted a green light?

4 A. Yes.

5 Q. Okay. Why did Lobo request -- did Lobo tell you who he  
6 requested a green light from?

7 MR. MURPHY: Objection, your Honor, as to a time  
8 frame.

9 THE COURT: Why don't you establish a time frame.

09:34AM 10 MR. POHL: Sure.

11 Q. Did Lobo -- so Lobo told you that he believed Pelon was a  
12 snitch?

13 A. Yes.

14 Q. And did -- and Lobo told you that after you were arrested  
15 in this case, correct?

16 A. Yes.

17 Q. Did Lobo tell you -- and Lobo told you he asked for a  
18 green light?

19 A. Yes.

09:34AM 20 Q. Did Lobo tell you when he asked for the green light  
21 against Pelon?

22 A. Yes.

23 Q. When?

24 A. Afterwards when he got out of jail.

25 Q. After Lobo got out of jail?

1 A. Yes, when he was arrested with a gun.

2 Q. And did Lobo tell you who he asked for the green light?

3 A. He told me that he had spoken to Casper.

4 Q. Okay. And did he tell you what Casper said?

5 A. Yes.

6 Q. And what did Casper say?

7 A. That he had to be sure -- he had to be sure that Pelon was  
8 a snitch, that he couldn't give the green light until he was  
9 sure that he was a snitch.

09:36AM 10 Q. Okay. Did Lobo tell you who -- did Lobo talk to you about  
11 how he planned to kill Pelon?

12 A. Yes, he told me he had made a plan with Checha and that  
13 everything was ready, and I asked him why I hadn't been told.  
14 And he said to me, no, well, how could we tell you if you were  
15 Pelon's best friend? If we had told you, you would have gotten  
16 involved to help Pelon. That's why we didn't tell you.

17 Q. Go back to Exhibit Number 23 for just a minute. And if I  
18 could --

19 MR. POHL: Jurors, if I could ask you to turn to page  
09:37AM 20 6 of that transcript.

21 Q. I'm just going to start at the top, Mr. Hernandez Miguel.

22 Lobo: "I called the homeboy."

23 Casper: "This homie was there with you?"

24 CW-1: "With me."

25 Casper: "He was there and you didn't report it?"

1 Lobo: "You are right there. I accept it, homie. I  
2 was told to tell the truth, and I'm not bullshitting you."

3 Casper: "Well, if you're going to lie, things are  
4 going to get even uglier. You have to tell the truth, homie."

5 Lobo: "I'm telling the truth, homie."

6 Casper: "I'm going to tell you to whom we have sent  
7 money, Homie. That money (unintelligible) because some dudes  
8 are broke and have to sacrifice a lot for those \$100. Like I  
9 said, this is (unintelligible) homeboy, you know,  
09:38AM 10 (unintelligible). He fired that gun. He was with a homeboy,  
11 dude. Mariaco gave, Playa gave, Caballo gave, for them to come  
12 up because they were down below that was more complicated and  
13 more serious because they were deported. So what I think homie  
14 is that you have to pay back that money, and that money will go  
15 to Loquillo."

16 Playa: "How much is it, homie?"

17 Casper: "\$2,500. That is my opinion. The other  
18 homeboys are here, and if the others say no, I'm with that, but  
19 we need to be logical because you got into this problem, you  
09:39AM 20 didn't report the problem, you weren't with homeboys, you were  
21 with girls. I know that you had a problem there. You were  
22 stuck, and that (unintelligible) gave you that gun to defend  
23 yourself if you were having a problem."

24 Lobo: "Now, I'm going to say something. There are  
25 dudes that are packing their guns. It could happen to any

1 homeboy. I say this humbly. I am sorry if I fucked up, but it  
2 could happen to any homie. There is that homie, Caballo,  
3 always packs his gun. God willing nothing like this will  
4 happen to him."

5 Caballo: "Look, dude, here is the thing. There is a  
6 method to packing a gun, dude. If you go around showing it off  
7 with it, you're going to mess up, dude. At no times showing it  
8 off."

9 I think that's enough. I just want to ask you a  
09:40AM 10 couple questions about that passage. So you heard the  
11 conversation about Mariaco, Playa, Caballo giving money for  
12 people that have been deported?

13 A. Yes.

14 Q. And Loquillo as well?

15 A. Yes.

16 Q. Can you just explain to the jury what -- you're at this  
17 meeting, correct?

18 A. Yes.

19 Q. What's Casper talking about here?

09:40AM 20 MR. MURPHY: Objection, your Honor.

21 THE COURT: I'll allow him to testify as to his  
22 understanding. Obviously, the words are the words, but he can  
23 explain his understanding. Overruled. Just to be clear on  
24 that, he can only testify as to how he interpreted it. He  
25 can't say what was in Casper's mind. Go ahead.

1 MR. MURPHY: Thank you, your Honor.

2 THE COURT: I'm sorry, Mr. Lopez.

3 MR. LOPEZ: Can you have the interpreter interpret  
4 what you say so that the witness understands what your ruling  
5 is?

6 THE COURT: I thought that was happening.  
7 Ms. Huacuja.

8 THE INTERPRETER: I did not interpret that. No.

9 THE COURT: All right. Can you instruct the witness  
09:41AM 10 just to be careful. He can testify as to his understanding of  
11 what was happening or what people said, but he can't testify  
12 about what other people were thinking or what they intended.  
13 He can't look inside their minds.

14 (Interpreter interpreting)

15 Go ahead, Mr. Pohl.

16 MR. POHL: Thank you, your Honor.

17 Q. So, Mr. Hernandez Miguel, what is your understanding of  
18 what is being said here by Casper?

19 A. That the money, the \$100 that was going to be paid for  
09:42AM 20 Lobo, would be better used to collect that money to help  
21 Loquillo.

22 Q. Okay. Let me ask you one question before we go onto  
23 Loquillo. Lobo had been arrested for that gun?

24 A. Yes.

25 Q. And he had gotten -- and then he had been in custody and

1 had gotten released?

2 A. With a bail.

3 Q. Okay. And who paid for the bail, if you know?

4 A. I don't remember.

5 Q. Okay. So what is the money then that people are  
6 collecting for Lobo about?

7 A. That was money to help Lobo because he had paid a bail,  
8 and the clique always has the obligation of helping a dude when  
9 he has a problem.

09:43AM 10 Q. All right. And so you were about to get to Loquillo.  
11 Who's Loquillo?

12 A. He's another member of the Eastsides, a homeboy.

13 Q. And at the time of this conversation, where was Loquillo?

14 A. He was in El Salvador, deported.

15 Q. Okay. And why was the clique talking about gathering  
16 money for Loquillo?

17 A. That -- we were saying in the clique that instead of  
18 getting, collecting money to help Lobo with the bail that the  
19 money would be better used to bring Loquillo back up here.

09:44AM 20 Q. Was there any discussion at this meeting or other ESLS  
21 clique meetings about Lobo replacing the gun?

22 A. Yes.

23 Q. And were you present for those discussions?

24 A. Yes.

25 Q. Okay. And what did Lobo -- well, who discussed with

1 Lobo -- did Lobo have to get another gun?

2 MR. MURPHY: Objection, your Honor.

3 THE COURT: I guess I'll sustain it in that form.

4 Q. Okay. All right. Lobo lost a gun, correct?

5 A. Yes.

6 Q. The police took the gun that he had with him at the  
7 restaurant?

8 A. Yes.

9 Q. Okay. What did Lobo do after he had lost the gun to the  
09:45AM 10 police?

11 A. The clique told him that he had to pay back the clique for  
12 the gun that he had lost because he had lost it for being  
13 stupid.

14 Q. And when you say pay the clique back, how was Lobo  
15 supposed to pay the clique back?

16 A. By buying a gun from his own money and bringing it to the  
17 clique.

18 Q. Okay. And -- okay. The last thing I think before we  
19 leave this particular incident, Mr. Hernandez Miguel, there's a  
09:46AM 20 section of the transcript that talked about Caballo, and it  
21 says that Caballo always carried a gun?

22 A. Yes.

23 Q. Had you seen -- have you seen Caballo with a gun?

24 A. Yes.

25 MR. POHL: May I approach the witness?

1 THE COURT: Yes.

2 Q. I'm putting in front of you, Mr. Hernandez Miguel, what's  
3 has been previously admitted as Exhibits 82.1. Have you seen  
4 this before?

5 A. Yes.

6 Q. Where have you seen it before?

7 A. Well, that gun was originally Checha's gun, Checha sold it  
8 to Caballo.

9 Q. Okay. When did Checha sell it to Caballo?

09:48AM 10 A. I don't remember.

11 Q. Okay. How did you know that Checha sold it to Caballo?

12 MR. NORKUNAS: Objection.

13 THE COURT: I'll allow it. He's explaining his  
14 previous answer which was not objected to. Go ahead.

15 Q. How do you know that Checha gave this gun to Caballo?

16 A. He sold it to him. First I had seen that gun on Checha  
17 when he was packing it.

18 MR. NORKUNAS: There's no question in front of the  
19 witness.

09:48AM 20 THE COURT: Yes, there is, go ahead.

21 A. And then I saw it on Caballo and he told me that Checha  
22 had sold it to him.

23 MR. NORKUNAS: Objection. I ask that it be stricken.

24 THE COURT: Is that one of the *Petroziello* statements?

25 MS. LAWRENCE: I believe so, your Honor.



1 THE COURT: Pardon.

2 MS. LAWRENCE: I believe so, your Honor.

3 THE COURT: All right. I'll let it stand.

4 Q. Mr. Hernandez Miguel, in that passage you talked about  
5 collecting money in the clique --

6 THE INTERPRETER: I'm sorry, I missed the first part  
7 of your question.

8 Q. Sure. In the transcript that we just read, there was  
9 discussion about collecting money to bring back members of  
09:49AM 10 Eastside that were in El Salvador.

11 A. Yes.

12 Q. And would I be correct that that was -- bringing people  
13 back from El Salvador was something that was talked about at a  
14 lot of clique meetings?

15 A. Yes.

16 MR. POHL: Could I have this for the witness, Madam  
17 Clerk?

18 THE CLERK: Yes.

19 Q. Mr. Hernandez Miguel, I'm going to ask you to watch a few  
09:50AM 20 seconds of this and see if you remember it.

21 (Video played for the witness.)

22 Q. Let me stop it right there. Do you recognize this tape?

23 A. Yes.

24 Q. And who do you see in the picture -- in the section of the  
25 video that we just saw, that you just saw?

1 A. I see Casper and Playa there.

2 Q. And do you know where this is?

3 A. Yes.

4 Q. Where is it?

5 A. At the garage in Everett.

6 Q. Okay. And I could continue playing this, but do you  
7 remember what happens on this day, this video? You've seen  
8 this video before your testimony here today, correct?

9 A. Yes.

09:52AM 10 Q. What is this a video of -- or excerpts of a video of?

11 A. It's from when we have the meetings.

12 Q. Okay.

13 MR. POHL: Your Honor, I'd offer this and ask for  
14 permission to publish it to the jury, 25.1 through 4.

15 THE COURT: 25.1 through 25.4, did you see?

16 THE CLERK: Yes.

17 MR. POHL: Yes, your Honor.

18 MR. MURPHY: May we have a date?

19 MR. POHL: Yes, the corresponding transcript is 24,  
09:52AM 20 which is March 29, 2015.

21 THE COURT: 25.1 through 25.4 is admitted.

22 (Exhibit No. 25.1 through 25.4 received into  
23 evidence.)

24 Q. So, Mr. Hernandez Miguel, I think what I'm going to do is  
25 play the videos and then I will stop it from time to time and

1 ask you questions.

2 (Video played.)

3 Q. Who is that, Mr. Hernandez Miguel?

4 A. Casper.

5 Q. And there's a person sort of slightly out of view with a B  
6 hat. Do you know who that is?

7 A. Yes.

8 Q. Who is that?

9 A. Playa.

09:54AM 10 (Video played.)

11 Q. When is this? This is at the garage?

12 A. Yes.

13 Q. And has the meeting started yet in this portion of the  
14 video?

15 A. Not yet.

16 Q. Okay. How did the ESLS clique meetings that you attended  
17 start?

18 A. Greeting the dudes and then we'd start saying that the  
19 meeting's about to start and then the word would start talking.

09:55AM 20 (Video played.)

21 Q. All right. Somebody just walked into the screen there.  
22 Who is that?

23 A. Playa.

24 Q. Okay. And what's Playa doing sort of before the meeting  
25 starts?

1 A. Right now, Playa is collecting the dues from each member  
2 of the clique, the money.

3 (Video played.)

4 Q. Can you see the video?

5 A. Yes.

6 Q. So who is that in the video?

7 A. That's Casper and myself.

8 (Video played.)

9 Q. What's Playa doing now? I'm sorry. What's Playa doing  
09:57AM 10 now?

11 A. He's collecting the money of the dues that each homeboy  
12 has to pay because he's the one in charge of the money, so he  
13 knows who has paid and who hasn't paid, and so if somebody owes  
14 money, he'll say he has a -- he's got it all written down and  
15 he'll say, "Hey, you owe this."

16 (Video played.)

17 Q. What's Playa doing right now?

18 A. He's counting the money.

19 (Video played.)

09:59AM 20 Q. All right. Now, what's happening?

21 A. Playa is giving a report saying how much money is in the  
22 box and how much money went up and now Casper is about to begin  
23 the meeting.

24 Q. Okay. So you talked about the fact that Casper is there,  
25 correct?

1 A. Yes.

2 Q. Playa is there?

3 A. Yes.

4 Q. Who else is at this meeting?

5 A. Lobo, Checha, Negro, Tigre, Chico, Brujo, everyone is  
6 there.

7 (Video played.)

8 Q. All right. Playa stepped to the side, Casper came in  
9 front. What's happening now?

10:01AM 10 A. Well, Playa finished giving the report on the account of  
11 the money situation and now Casper is starting the meeting and  
12 giving -- explaining the reason why he called the meeting.

13 MR. POHL: Okay. Jurors, can I have you go to tab 24.

14 Q. We're not going to read this whole transcript, but at the  
15 bottom of page 1 begins:

16 Playa: "700, 250, 100 more. Does someone want to pay  
17 what he owes?"

18 Casper: "It's not that he wants to, homie. He has to  
19 pay \$30 now."

10:02AM 20 Playa: "Lobo's money 1,000 and right now 1500, 300  
21 from everyone's dues, 1200 for Lobo and 300 are left there,  
22 gathered 1500 from all the homies, 400 from Chico, \$80 more.  
23 The reason are 3, one so that people who owe money will pay.  
24 Another reason is that Psychito, homies, is that that dude is  
25 ready."

1 MR. POHL: All right. Can I have jurors turn to page  
2 5. Thank you.

3 Q. So, Mr. Hernandez Miguel, who's Psycho or Psychito?

4 A. Psychito is also a member of the Eastside.

5 Q. At the time of this meeting, do you know where Psychito  
6 was?

7 A. Yes.

8 Q. And where was that?

9 A. In El Salvador.

10:03AM 10 Q. And what -- what is being discussed at this meeting  
11 concerning Psychito?

12 A. To bring him over here.

13 Q. All right. Page -- I think I told you page 6. I  
14 apologize, page 5. So in the middle of the page.

15 Casper: "So the system is that when you hear rumors  
16 that we are going to have something, call others to find out.  
17 For now we are going to bring the dude. We are going to be  
18 sure we gather more money, if necessary, because we can't leave  
19 the dude halfway up here. His family is going to help him."

10:04AM 20 Checha: "When does he leave?"

21 Casper: "Monday or Tuesday. We're going to get in  
22 touch with the coyote that is waiting for him in Mexico."

23 Playa: "Does he have money to leave now?"

24 Casper: "Yes, \$300."

25 Muerto: "\$300 to use down there."

1 Lobo: "Does the guy already have a coyote?"

2 Casper: "The family got the coyote and he's charging  
3 a low fee. He's charging only \$5500."

4 Playa: "The guy will need \$300 by tomorrow."

5 Casper: "Negro, you will be responsible for sending  
6 the money. We have to be on top of it after he gets to Mexico.  
7 We'll have another meeting when the guy gets to Mexico."

8 All right. Let me stop right there. I'm going to  
9 read the rest of this page. Let me just stop right there.

10:04AM 10 "Negro, you'll be responsible for sending the money."

11 So can you explain that? Playa on the video collected  
12 money?

13 A. Yes.

14 Q. So who is responsible in the Eastside clique for sending  
15 money from the clique to members in El Salvador?

16 MR. MURPHY: Objection.

17 MR. LOPEZ: Objection. Asked and answered yesterday.

18 THE COURT: Overruled.

19 MR. MURPHY: Your Honor, may we approach?

10:05AM 20 THE COURT: Yes.

21 (THE FOLLOWING OCCURRED AT SIDEBAR:)

22 THE COURT: Yes.

23 MR. MURPHY: Your Honor, given the way the testimony  
24 has gone this morning, I'd request the same kind of cautionary  
25 instruction about immigration law violations that the Court has

1 given about firearms. In other words, they aren't racketeering  
2 acts, they aren't charged in the indictment.

3 THE COURT: Okay. I'll do that.

4 (SIDEBAR CONFERENCE WAS CONCLUDED)

5 THE COURT: All right. Ladies and gentlemen, you'll  
6 recall that I gave you an instruction to the effect that  
7 there's evidence of firearm violations, but that those -- no  
8 one was charged with firearms violations, and they weren't  
9 racketeering acts. The same goes for immigration violations.

10:06AM 10 Again, no one here is charged with immigration violation, and  
11 those are not charged as racketeering acts.

12 Go ahead, Mr. Pohl.

13 MR. POHL: Thank you very much, your Honor.

14 Q. Mr. Hernandez Miguel, Playa collects the money from people  
15 in the clique?

16 A. Yes.

17 Q. Who in the clique is responsible for sending money from  
18 the clique here to members of Eastside in El Salvador?

19 MR. LOPEZ: Objection.

10:07AM 20 THE COURT: Overruled.

21 A. There are several. There's Negro, Vincentino, and Checha  
22 did it several times as well.

23 Q. All right. So is there a way that -- well, when somebody  
24 sends money to El Salvador, what do they have to do -- do you  
25 know where they send the money from?



1 A. Yes.

2 Q. Where is that?

3 A. Western Union.

4 Q. Okay. And how -- do you know whether Negro, Vincentino,  
5 Checha ever actually sent the money for the clique from -- at  
6 Western Union to people in El Salvador?

7 A. Yes.

8 Q. Okay. How do you know?

9 A. Because whenever a dude is asked to take the money and go  
10:08AM 10 and send it to the dudes in El Salvador, he has to then return  
11 with a receipt and show everyone the receipt of actually  
12 sending the money.

13 Q. All right. I'm going to finish this page of the  
14 transcript and then we're going to get back to the video.

15 6, on page 6.

16 CW-1: "Do you have the money, Lobo, to buy a gun?"

17 Flaco: "We're working on money for something else."

18 Casper: "The gun is necessary, but we have to focus."

19 CW-1: "If you have the money, I can hook you up."

10:09AM 20 Checha: "If he has money, it would be better to use  
21 it to bring Psychito than to buy a gun right now."

22 Casper: "Let's wait and see how much money we will  
23 have in case of emergency for Psychito. We have to have money  
24 in case Psychito has an emergency."

25 Playa: "There's 355 money from dudes without

1 including the rest."

2 Casper: "Best to have it there. Anything else that  
3 anyone wants to discuss? Everything is okay then? All right.  
4 So let's stay in touch for the next meeting. Let's wait and  
5 see how much money we will have in case of emergency for  
6 Psychito."

7 MR. MURPHY: Objection, your Honor. I think there's  
8 simply a repetition.

9 THE INTERPRETER: I'm sorry, I didn't hear --

10:10AM 10 THE COURT: A repetition? I'm sorry, meaning he's  
11 read the transcript wrong.

12 MR. MURPHY: Yes.

13 THE COURT: All right. Why don't you reread that last  
14 part and try to make it accurate. Again, ladies and gentlemen,  
15 the reading is a form of presenting it to you, but the  
16 transcript is the actual evidence.

17 Q. "Best to have it there -- well, excuse me."

18 Casper: "Best to have it there. Anything else that  
19 anyone wants to discuss? Everything is okay then? All right.  
10:10AM 20 So let's stay in touch for the next meeting. Let's wait and  
21 see how much money we will have in case of emergency for  
22 Psychito. We have to have money in case Psychito has an  
23 emergency."

24 Playa: "There's 355 money from dudes without  
25 including the rest."

1 Casper: "Best to have it there. Anything else that  
2 anyone wants to discuss? Everything is okay then? All right.  
3 So let's stay in touch for the next meeting."

4 Playa: "What about Chentino, he also has to give us  
5 an explanation?"

6 What does Chentino have to give an explanation for, do  
7 you remember?

8 A. No, I don't remember.

9 Q. All right. I'm going to let the video play in a second,  
10:11AM 10 but how do you end your meetings?

11 A. Flashing MS.

12 (Video played.)

13 Q. Did you -- Mr. Hernandez Miguel, did you see a hand sign  
14 in the video?

15 A. Yes.

16 Q. Okay. And what was it?

17 A. Flashing MS, like this. (Indicating)

18 Q. Okay. Who did you see flash MS?

19 A. Casper, myself. We all do it when the meeting is over.

10:12AM 20 Q. So the last line on page 7 of this transcript is:

21 Casper: "We'll have to leave it to Sunday. See what  
22 he has to say. Watch out then, the Mara."

23 All right. So I think after the meeting breaks up,  
24 there's one more clip I'd like to show you, which is 25.4.

25 (Video played.)

1 THE INTERPRETER: Excuse me, there's no 25. I don't  
2 have the 25.4.

3 THE COURT: It's the video, it's not the transcript.

4 THE INTERPRETER: Oh. Okay, sorry.

5 Q. Who is that, Mr. Hernandez Miguel?

6 A. Playa.

7 Q. What's Playa doing here?

8 A. Counting the money.

9 (Video played.)

10:15AM 10 MR. POHL: For the witness only.

11 Q. So, in that last clip, did you see, as the meeting broke  
12 up, a number of the members of the Eastside clique?

13 A. Yes.

14 Q. I'm going to show you, for the witness, what's been marked  
15 as Exhibit Number 26. Do you see that, Mr. Hernandez Miguel?

16 A. Yes.

17 Q. Was that -- is this a still picture from that last video  
18 clip that we just watched?

19 A. Yes.

10:16AM 20 Q. Who is that in the picture?

21 A. Checha.

22 MR. POHL: I'd offer 26 and ask to publish, your  
23 Honor.

24 THE COURT: All right. It's admitted, 26.

25 (Exhibit No. 26 received into evidence.)

1 Q. Who is that again, Mr. Hernandez Miguel?

2 A. Checha.

3 Q. All right. Mr. Hernandez Miguel, at the time that you  
4 were arrested in this case, you had possession of the clique  
5 gun?

6 MR. MURPHY: Objection, your Honor. Leading.

7 THE COURT: Sustained.

8 Q. Well, at the time that you were arrested in this case,  
9 what -- at the time you were arrested in this case,  
10:17AM 10 what -- well, did you have a gun at the time that you were  
11 arrested in this case?

12 A. Yes.

13 Q. Okay. What kind of gun was it?

14 A. A 9 millimeter.

15 Q. Okay. How long had you had it?

16 A. Approximately three weeks or a month.

17 Q. And was the gun your own personal gun?

18 A. No.

19 Q. Okay. What do you mean by that?

10:18AM 20 A. That was the clique gun. The clique bought it for all the  
21 homeboys, whoever needed it.

22 Q. Okay. Did you have ammunition for the gun?

23 A. Yes.

24 Q. Okay. Do you know --

25 MR. POHL: May I approach the witness, your Honor?

1 THE COURT: Yes.

2 Q. Mr. Hernandez Miguel, I'm going to show you a series of  
3 items starting with Exhibit Number 51. Do you recognize that?

4 A. Yes.

5 Q. What is that?

6 A. That's the 9 millimeter I had at my house of the clique.

7 Q. Okay. Did you -- after you were arrested in this case,  
8 you and your attorney met with agents, correct?

9 A. Yes.

10:20AM 10 Q. Okay. And do you know whether or not you talked about  
11 this gun in that conversation?

12 A. Yes.

13 Q. Okay. And what did you say about this gun in that  
14 conversation?

15 A. That I had the clique gun in my basement.

16 Q. Okay. And did you have ammunition for that gun in your  
17 basement?

18 A. Yes.

19 Q. Okay. And would that be Exhibit Number 52?

10:20AM 20 A. Yes.

21 Q. What's that?

22 A. Those are the bullets.

23 Q. What kind of bullets?

24 A. 9 millimeters.

25 Q. Okay. And it's an entire box?

1 A. Yes.

2 Q. The box was full?

3 A. Yes.

4 Q. Okay. And Exhibit 53, were these also in your basement?

5 A. Yes.

6 Q. Okay. What are they?

7 A. The same thing, they're bullets for a 9 millimeter.

8 Q. Okay. And finally this bag, this is Exhibit Number 54.

9 Have you seen that before?

10:21AM 10 A. Yes.

11 Q. And what are these?

12 A. They're bullets for a 45.

13 Q. Mr. Hernandez Miguel, while you had the clique gun and the  
14 ammunition, did any member of the Eastside clique ask to borrow  
15 it?

16 A. Yes.

17 Q. And who was that?

18 A. Checha.

19 Q. Did Checha say why he wanted to borrow it -- "borrow" is  
10:22AM 20 probably the wrong word. Did he ask you why he wanted to get  
21 it?

22 MR. NORKUNAS: Objection.

23 THE COURT: I'll sustain the objection. What did  
24 Checha say?

25 Q. When Checha talked to you about the gun, what did he say?

1 A. He said that he needed the gun because there were some  
2 culeros at Casa Mariachi. He asked me if I could bring it  
3 over, and I said no, that, if you wanted it, he needed to come  
4 to the house to get it.

5 So he came to the house, and when I took out the gun  
6 and showed it to him so he would take it, he told me that he  
7 didn't need it any longer, that he had just come by to pick up  
8 the bullets because he had one, but what he didn't have were  
9 bullets, and he only took the bullets.

10:24AM 10 Q. Mr. Hernandez Miguel, I want to talk to you about an  
11 incident in May of 2015, where you committed a stabbing. Do  
12 you remember that?

13 A. Yes.

14 Q. Okay. Do you remember how that incident began? Where  
15 were you?

16 A. Yes.

17 Q. Where were you?

18 A. First, I was at the garage in Everett. Pelon called me  
19 and said let's go eat at Casa Mariachi in Chelsea. Well, we  
10:25AM 20 were halfway there, Brujo called that they were at a park, a  
21 ballpark in Chelsea, that Vago had gone there to buy marijuana  
22 and that there were about 12 chavalas at the basketball court  
23 and that they had started some problems with Vago and could we  
24 drop in, so I said that we had nothing with us in the car.

25 Pelon told me let's call Domingo, so I called Domingo



1 to bring something from the house. So Domingo brought out a  
2 knife, so after we picked up the Domingo, we headed to the  
3 park. When we got to the park, we saw a whole bunch of culeros  
4 over there, so I said we're going to go in, but we're not going  
5 to start problems to see what the 18s would say.

6 Q. Let me ask you another question, okay. You got to the  
7 park. Okay. Who -- did you see people from MS in the park?

8 A. Yes.

9 Q. Who was at the park?

10:26AM 10 A. Brujo, Vago, Vampiro, myself, Pelon, and Domingo hadn't  
11 been jumped into MS.

12 Q. Okay. When you got to the park, Domingo had the knife?

13 A. Yes.

14 Q. Okay. What are we talking about here, Mr. Hernandez  
15 Miguel, what kind of knife did he have?

16 A. It was a yatagan, and it's about this big, the kind that's  
17 used by the military. (Indicating)

18 MR. POHL: I'll just ask the record to reflect that  
19 the witness held his hands about I guess maybe a foot apart.

10:27AM 20 THE COURT: All right.

21 Q. So what happened next, Mr. Hernandez Miguel?

22 A. It was -- we went in, me, Domingo was behind me, Brujo,  
23 Vago and Vampiro.

24 Q. Okay. Let me stop you right there. Where was Pelon?

25 A. Pelon had stayed in the car. I don't know what he was

1 fixing in the car, but he was the last one to get out.

2 Q. All right. Then what happened when you were in the park  
3 with Brujo, Vago, Vampiro, yourself, what happened?

4 A. We walked into the park, and when we got to a corner over  
5 here, the chavalas were over there, and since I was wearing a  
6 blue shirt and a baseball cap that says "503," and it was blue,  
7 and I was wearing shorts and Nike Cortez, so when they saw me,  
8 they immediately got up. So when they stood up, I flashed the  
9 MS, and I said, "It's La Mara, you sons of bitches, what's up?"

10:29AM 10 And one chavala was telling the others to come get --  
11 jump us, and I saw one pull out a knife. So when I saw that, I  
12 said to Domingo, hey, Domingo get that thing out, give it to  
13 me. When Domingo tried to pull out the knife, he wasn't able  
14 to get it out. When they saw that Domingo pulled out the  
15 knife, a bunch of them started running away, and Domingo handed  
16 me the knife and we started following them.

17 Vampiro followed some from one side, and I went on the  
18 other side. Then I saw two dudes beating one that was on the  
19 ground like they had knocked him to the ground. I didn't see  
10:30AM 20 when they knocked him to the ground, but when I saw that they  
21 were beating him on the ground, I came over with a knife and I  
22 started stabbing downwards at him with the knife, so then I saw  
23 that the guy was like kicking his feet up in the air and trying  
24 to crawl under a car.

25 When I was stabbing him, he deviated the knife that

1 was in my hand when he kicked and I wound up cutting myself  
2 here with the knife.

3 Q. After you stabbed him, where did you go?

4 A. Myself, Pelon, and Domingo got into Pelon's car, and  
5 Vampiro and Brujo and Vago left in Vampiro's car. Each car  
6 went its own way. We headed towards Revere. Since my hand --  
7 since I had a wounded hand, I was bleeding a lot, and I wrapped  
8 the shirt around it. And while we were going down Broadway, I  
9 said to Pelon, let's go over to Playa's because he lived around  
10:32AM 10 there, and I was wounded. So we called Playa and headed to his  
11 house, and we got there. We -- Playa opened the door, and we  
12 went down to like a basement. He has there, and I told him  
13 then what had happened, and since I had blood on my shorts and  
14 on my shirt, he helped me clean the wound, he gave me  
15 something. He had like a bottle of tequila and with that  
16 bottle of tequila, he spilled some on the wound to clean it.

17 Q. Stop. Let me ask you another question. So the people  
18 that were at Playa's house, were you?

19 A. Yes.

10:33AM 20 Q. Pelon?

21 A. Yes.

22 Q. And Domingo?

23 A. Yes.

24 Q. And I think you testified earlier that Domingo hadn't been  
25 jumped into MS-13 yet, correct?

1 A. No.

2 Q. And was Domingo hanging around or associated with a  
3 clique?

4 A. Yes.

5 Q. Do you know which one?

6 A. He was with the Enfermos.

7 Q. Okay. And that's a different clique than yours?

8 A. Yes.

9 Q. Did Playa say anything to you about having Domingo at his  
10:34AM 10 house with you and Pelon?

11 A. Yes.

12 Q. What was that?

13 A. He asked us why we had brought the kid there, that we  
14 didn't know him and he might snitch on us and that he shouldn't  
15 bring people over that he didn't know, and I said, well, how  
16 could we leave him somewhere else since we were together.

17 Q. After -- well, I think you talked about cleaning your  
18 wound, correct? Did you do anything with your clothes?

19 A. Yes.

10:35AM 20 Q. What was that?

21 A. Playa gave me a pair of shorts and a shirt. And the  
22 bloody shorts and shirt he told me to leave it with him and he  
23 would take it to the garbage since he worked with the garbage.

24 Q. Where did you go next?

25 A. From there, I spoke to Brujo to find out where he was, and

1 Brujo told me they had run to the beach in Revere, and I said  
2 that we could see each other around Lynn because Chelsea was  
3 hot because of the stabbing.

4 MR. LOPEZ: Objection, your Honor. There's no  
5 question, he's just talking.

6 THE COURT: I'll let it stand. Why don't -- how much  
7 more do you have on this topic?

8 MR. POHL: Just a few questions and we could finish  
9 that and then after the break move onto something else.

10:36AM 10 THE COURT: Why don't we do that.

11 MR. POHL: Thank you, your Honor.

12 Q. Where did you go? You said you were going to meet up with  
13 somebody. Where did you end up going?

14 A. We wound up in Lynn near a port, by the water there in  
15 Lynn. There we met again with Brujo, Vampiro, and Vago.

16 Q. And what did you do with the knife?

17 A. We threw it in the ocean.

18 MR. POHL: I think this would be a good time to stop.

19 THE COURT: Okay. We'll take a break now.

10:37AM 20 THE CLERK: All rise for the jury.

21 (JURORS ENTERED THE COURTROOM.)

22 THE COURT: Can I see counsel at sidebar?

23 (THE FOLLOWING OCCURRED AT SIDEBAR:)

24 THE COURT: I received a report which I did not  
25 personally see that one of the defendants and, I'm sorry,

1 street name Lobo made a threatening gesture to the witness in  
2 the form of putting his hands to the face and making it look  
3 like a gun.

4 I didn't personally see it. I'm going to be looking  
5 for it and I'm making no finding now but alerting everyone to  
6 it. Obviously, it's a very serious matter, and if it comes to  
7 that and it winds up I need to hold a hearing or whatever,  
8 obviously one of the possibilities is not permitting the  
9 defendant to attend, to attend remotely, but we'll take it a  
10:56AM 10 step at a time, and, again, I didn't personally see anything,  
11 and I'm making no findings.

12 MR. LOPEZ: Was it a juror who raised this issue?

13 THE COURT: No. Thank you.

14 (SIDEBAR CONFERENCE WAS CONCLUDED)

15 THE COURT: All right. Mr. Pohl.

16 MR. POHL: Thank you very much, your Honor.

17 Q. Mr. Hernandez Miguel, after you threw the knife into the  
18 ocean, the knife you had used for the stabbing, did you talk  
19 about that stabbing after that?

10:57AM 20 A. Yes.

21 MR. POHL: Jurors, can I ask you to pull out your  
22 transcript binders for Exhibit 73. 73.

23 Q. All right. This is a recording from June 4, 2015,  
24 correct?

25 THE INTERPRETER: I'm sorry.

1 Q. From June 4, 2015. I'm sorry, 73. And do you remember  
2 where you were when you had this conversation, Mr. Hernandez  
3 Miguel?

4 A. In Pelon's car.

5 Q. Muerto: "No, it's awesome, man. We're going to attack  
6 with this son of a bitch, too. In Chelsea we have fucked up  
7 several culeros. I attacked some with a knife exactly like  
8 this one, identical. I hit the son of a bitch on Highland  
9 Street. There were a whole bunch of culeros."

10:58AM 10 CW-1: "About 10."

11 Muerto: "About 10. There were six of us, four."

12 CW-1: "Four."

13 Muerto: "There were another three dudes, and we were  
14 three more. Six of us. They all took off running. I went  
15 straight after them. The beast got you, sons of a bitches.  
16 This is the one that rules. They all stopped. The guys were  
17 frozen. I said to the other dude, "Get me the machete." As  
18 that guy gave it to me, the sons of a bitches ran, man. No,  
19 man, afterwards, (unintelligible) sitting down (unintelligible)  
10:59AM 20 we got them, dude."

21 MR. POHL: Can I have 74 for the witness, 74.1-3,  
22 thank you, Madam Clerk.

23 Q. Do you recognize this, Mr. Hernandez Miguel?

24 A. Yes.

25 Q. Okay. 2 and 3. The transcript we just read talked about

1     you having -- you using a knife just like this one, right?

2     A.    Yes.

3     Q.    And you had a knife on you when you were describing this,  
4     right?

5           THE INTERPRETER:  I'm sorry.

6     Q.    And you had a knife on you at the time you were describing  
7     this?

8     A.    Yes.

9     Q.    Are these pictures of that knife?

11:00AM 10    A.    Yes.

11           MR. POHL:  Your Honor, I'd offer these.

12           THE COURT:  All right.  They're admitted 74.1 through  
13     3.

14           (Exhibit No. 74.1 through 74.3 received into  
15     evidence.)

16     Q.    What's this, Mr. Hernandez Miguel?

17     A.    That's the yatagan.

18     Q.    What's a yatagan?

19     A.    It's a knife that soldiers use and it's about this big.

11:00AM 20    (Indicating)

21     Q.    Again, you're holding your hands maybe a little under the  
22     length of your shoulders apart; is that correct?

23     A.    Yes, a little bit smaller than a machete.

24     Q.    .2.  Do you see -- does the knife have an edge?

25     A.    Yes.



1 Q. Can you see that in that photograph?

2 A. Yes.

3 Q. .3. What is that?

4 A. That's the knife. It has the handle and it's inside the  
5 container.

6 Q. Okay. So just so that we're clear, this is not the knife  
7 you used for the stabbing, correct?

8 A. No.

9 Q. Okay. You threw that knife in the ocean?

11:01AM 10 A. Yes.

11 Q. And I know we talked about the gun and the ammunition that  
12 was found at your house. Did you also have another weapon at  
13 your house after you were arrested in this case?

14 A. Yes.

15 MR. POHL: Can I approach, your Honor?

16 THE COURT: Yes.

17 Q. Okay. I'm handing you or I'm going to hold up for you  
18 Exhibit 50. Do you recognize that?

19 A. Yes.

11:02AM 20 Q. Okay. What is this?

21 A. It's a machete.

22 Q. Okay. So just so I'm clear, the knife that we're looking  
23 at here in this picture, is that knife this knife here that I'm  
24 holding, the machete?

25 A. No.

1 Q. Different?

2 A. It's different.

3 Q. And what is this weapon, Exhibit 50?

4 A. It's a weapon that most of the dudes in MS use to attack  
5 the chavalas.

6 MR. MURPHY: Objection, your Honor. May that be  
7 stricken?

8 THE COURT: Yes, I'll strike the answer.

9 Q. So is this your machete?

11:03AM 10 A. Yes.

11 Q. All right. This was at your house?

12 A. Yes.

13 Q. With the guns?

14 A. The guns were in the basement, the machete was in my room.

15 MR. POHL: Okay. I'd offer 50, your Honor.

16 THE COURT: All right. It's admitted, Exhibit 50.

17 (Exhibit No. 50 received into evidence.)

18 Q. Mr. Hernandez Miguel, have you ever heard of the term, "a  
19 program"?

11:04AM 20 A. Yes.

21 Q. And you've used, on a number of occasions, the word  
22 "clique"?

23 A. Yes.

24 Q. Does the word "program" mean anything to you as a member  
25 of MS-13?

1 A. Yes.

2 Q. Okay. So what is a program?

3 A. Every clique has to be in a program. Only runners who are  
4 the leaders of MS can be in the program. Those runners are  
5 even higher up than the clique runners, and every clique has to  
6 attach itself to a program.

7 Q. Have you ever heard of a program called the East Coast  
8 Program?

9 A. Yes.

11:06AM 10 Q. Okay. And how did you hear about the East Coast Program?

11 A. The East Coast Program is with the Eastside clique.  
12 That's where I heard about the program. Let's say you have a  
13 bowl --

14 MR. MURPHY: Objection, your Honor.

15 THE COURT: All right. Why don't you put another  
16 question to the witness.

17 Q. Okay. I think you were just trying to -- let me ask you  
18 this question. You were trying to explain -- I think you were  
19 trying to explain the relationship between a clique and a  
11:07AM 20 program?

21 A. Yes.

22 Q. So let me just ask you that question straight out. What  
23 is the connection between a clique and the program for MS-13?

24 A. The program sets the rules and decides, and the program  
25 might put a green light on members of cliques if they refuse to

1 enter the program because every clique has to be in a program,  
2 and there are several programs. And the program states that  
3 any clique that does not want to be in a program is rebelling  
4 against MS-13.

5 Q. So, let me ask you this. Were members of the Eastside  
6 clique -- well, so I understand what you're saying about  
7 programs wanting to control things, okay?

8 A. Yes.

9 Q. What benefits do clique members get for being in a  
10 program?

11 A. The obvious is that every member of a clique, let's say  
12 the Eastside clique, if a homie is deported to El Salvador, the  
13 program is supposed to receive that homie in El Salvador.

14 Q. What if someone is killed?

15 MR. MURPHY: Objection, your Honor.

16 THE COURT: Why don't you rephrase. I'm not sure what  
17 you mean.

18 MR. POHL: Sure.

19 Q. Are there any other benefits that the programs provide to  
20 members of MS-13?

21 A. Yes, if the clique is in the program and a dude -- a homie  
22 from the clique is killed, the program covers all the funeral  
23 costs.

24 Q. When you were a member of the Eastside clique, did you  
25 know whether Eastside joined the East Coast Program?

1 A. Yes.

2 Q. Okay. And did you?

3 A. Yes.

4 Q. Okay. And what was the requirement for Eastside in  
5 joining the East Coast Program? What kinds of things did the  
6 clique have to do to be in the program?

7 MR. MURPHY: Objection, your Honor.

8 THE COURT: I'll let him testify as to his  
9 understanding.

11:11AM 10 MR. MURPHY: Could that instruction be interpreted?

11 Q. Well, let me ask you this. When you joined the program,  
12 did the clique have to send money to El Salvador?

13 A. Yes.

14 Q. Okay. How much?

15 A. The program requests \$50 a month for each clique.

16 Q. Okay. And you and the members of Eastside joined the East  
17 Coast Program?

18 MR. MURPHY: Objection, your Honor.

19 THE COURT: The clique joined the program. Why don't  
11:12AM 20 you rephrase.

21 Q. So, you -- were you present at meetings -- strike that.  
22 Did the Eastside Locos Salvatrucha clique join the East Coast  
23 Program?

24 A. Yes.

25 Q. Okay. And did you discuss joining that program at clique

1 meetings?

2 A. Yes.

3 Q. Around when was this?

4 A. Around 2013 or 14.

5 Q. Okay. And how do you know from attending those meetings  
6 that Eastside was a part of the East Coast Program?

7 A. Because every clique that's in the program has to send \$50  
8 every month.

9 Q. Okay. And was the Eastside clique doing that?

11:13AM 10 A. Yes.

11 Q. Okay. While you were in the Eastside clique, did you and  
12 the other clique members talk about whether to stay in the East  
13 Coast Program?

14 A. Yes.

15 Q. Okay. Why --

16 MR. POHL: And, jurors, can I ask you to turn to tab  
17 27.

18 Q. So, before we read this transcript, Mr. Hernandez Miguel,  
19 when you talked at clique meetings about the East Coast

11:14AM 20 Program, were there members of your clique that did not want to  
21 be in that program?

22 A. Yes.

23 Q. And there were members who were -- who did want to be in  
24 the program?

25 A. Yes.

1 Q. Okay. And when you would -- did you ever -- well, where  
2 are the leaders of the East Coast Program based?

3 A. Most of them are in jail in El Salvador. Some are out in  
4 the street.

5 Q. Okay. And why did you -- why were there members of the  
6 clique that did not want to be in the program?

7 MR. LOPEZ: Objection.

8 THE COURT: He can testify -- please translate this --  
9 he can testify as to what people said, but, of course, he  
10 11:15AM doesn't know what they were thinking and can't testify about  
11 that.

12 (Interpreter interpreting)

13 THE INTERPRETER: Could you repeat the question? I  
14 didn't get to ask it.

15 MR. POHL: Sure.

16 Q. Well, let me ask it this way. When you were in the  
17 program, what is your understanding of who -- let me give you  
18 an example. If someone -- if one of the members of the clique  
19 had wanted to ask for a green light, okay, and you were in a  
20 11:16AM program, do you know how -- what you would have to do in order  
21 to get permission to do a green light?

22 MR. LOPEZ: Objection, your Honor.

23 THE COURT: Overruled.

24 A. I don't understand the question.

25 Q. Okay. Well, when you were -- that's right. While you

1 were in the Eastside clique, did you ever participate in calls  
2 with El Salvador?

3 A. Yes.

4 Q. Okay. And do you remember what kinds of -- why you called  
5 El Salvador?

6 A. Yes.

7 Q. Why was that?

8 MR. MURPHY: Objection, your Honor.

9 THE COURT: Well, again, you ask him why, and it  
11:17AM 10 suggests -- you're asking for people's thought process as  
11 opposed to asking what was discussed, which I'll allow.

12 MR. POHL: That's fine. Thank you, your Honor.

13 Q. So, when you called El Salvador -- when you called  
14 El Salvador, do you know a -- do you know a member of MS-13  
15 known as Scrappy?

16 A. I don't know him, but I have spoken to him.

17 Q. Okay. And what about an MS-13 named Suga or Sugar?

18 A. I also don't know him, but I have spoken with him.

19 Q. Okay. And do you remember a time where you were on a call  
11:18AM 20 with Scrappy and Sugar?

21 A. Yes.

22 Q. Okay. And do you remember what was discussed during that  
23 call?

24 A. Yes.

25 Q. What was discussed?



1 A. About the program.

2 Q. Okay. What kinds of things were discussed about the  
3 program?

4 A. Sugar said that he wanted to talk with the runners and the  
5 entire Eastside clique.

6 Q. Okay. And was there a call that at least in part captured  
7 that conversation?

8 A. Yes.

9 MR. POHL: Jurors, 27. Thank you.

11:19AM 10 Q. All right. So I'm not going to read the first couple  
11 pages. Fair to say that you -- there was a conversation about  
12 how you were going to make the call?

13 A. Yes.

14 Q. Whether you were going to use a phone, or use a WhatsApp  
15 or something like that?

16 A. Yes.

17 Q. Okay. And why do you call Scrappy?

18 A. Because Scrappy would speak more with them and also with  
19 Casper. He was more connected to Casper.

11:20AM 20 Q. Okay. When you say "them," who are you talking about?

21 A. With the dudes from the program.

22 Q. Okay. So, is Scrappy -- I understand you said a moment  
23 ago that you've never met him, but you've talked to Scrappy?

24 A. Yes.

25 Q. Okay. And based on the conversations that you've had with

1 Scrappy, did Scrappy tell you where he lived?

2 A. He never told me where he lived, but supposedly he lived  
3 around Texas.

4 Q. All right. And so after you called Scrappy, did you have  
5 a call with Sugar?

6 A. Yes.

7 MR. POHL: Okay. All right. So can we turn to page  
8 6. Thank you.

9 Q. Okay.

11:22AM 10 CW-1: "Yes. Call all of them."

11 Flaco: "Yo."

12 Casper: "Call them."

13 Unidentified male: "What's up?"

14 Casper: "What's up?"

15 Sugar: "Who is speaking?"

16 Casper: "Uh-huh."

17 Sugar: "Present are the dudes down here  
18 (unintelligible) and another one, but I don't know if you guys  
19 can talk there."

11:22AM 20 Casper: "Don't worry, it's fine. No, no, that's  
21 fine."

22 CW-1: "Call those dudes. Close the door over there."

23 Casper: "Go ahead."

24 Unidentified male: "I'll put him on right now.  
25 Wait."

1 Casper: "Hello."

2 Unidentified male 1: "We're here, right?"

3 Casper: "Hey, what's up, dog? It's Casper, homeboy.  
4 Hello."

5 Unidentified male 1: "Well, dog, how are you?"

6 Casper: "Fine. You know, Sugar called me the other  
7 day. He wanted to (unintelligible) with me, dog."

8 Sugar: "What's up? I'm here, brother."

9 Casper: "What's up, Sugar?"

11:23AM 10 Sugar: "How are we doing?"

11 Casper: "I'm here at the suite, what's up?"

12 Sugar: "Very well, we are only runners here and we  
13 are the runners on the streets for the East Coast Program?"

14 Casper: "Yes."

15 Sugar: "(Unintelligible.)"

16 Casper: "Yes."

17 Sugar: "What we're going to do is I'm going to talk  
18 with people here, 20 people here. Do you think that you can  
19 get us together with your clique? We are going to talk with  
11:23AM 20 them at your shop."

21 Casper: "Dog. You're calling the perfect place.  
22 Everybody is listening to you right here. We're all gathered  
23 here, dog."

24 Sugar: "All the homies from your clique are here?"

25 Casper: "All of us here listening to you, homeboy."

1           Sugar: "This is how things are. Listen up here, I'm  
2 the program spokesman, all right. Right. And so we are here  
3 going to do this thing. We have been planning for some time  
4 already."

5           Casper: "Uh-huh. So what's up? What happened? Once  
6 we are up, we'll continue with discussing how the things are."

7           And then the recording ends.

8           Okay. Where -- do you remember where that  
9 conversation took place?

11:24AM 10       A. Yes.

11       Q. Where?

12       A. At the garage in Everett.

13       Q. Okay. And were you able to hear on the call -- well, how  
14 many people were present from the Eastside clique when that  
15 call was made?

16       A. The entire clique.

17       Q. Okay. And how were you able to hear the conversation?

18       A. You put the speaker phone on.

19       Q. And who actually -- whose phone was used to make the call?

11:25AM 20       A. I don't remember.

21       Q. Okay. Mr. Hernandez Miguel, do you remember a meeting of  
22 the clique where Master and Tigre were beaten?

23       A. Yes.

24           MR. POHL: Can you pull out 28, jurors. Your Honor,  
25 this is -- just to be clear, this was -- this transcript goes

1 with Exhibit Number 206, which I think was admitted in full  
2 yesterday.

3 THE COURT: Yes.

4 THE INTERPRETER: Did you say 28?

5 MR. POHL: The transcript was 28, yes.

6 Q. And just to be clear, Mr. Hernandez Miguel, prior to your  
7 testimony here today, have you reviewed this recording?

8 A. Yes.

9 Q. And did you use the same process that we discussed  
10 11:27AM yesterday in reviewing it with the agents and the interpreter?

11 A. Yes.

12 Q. Okay. Did you identify the speakers on the recording as  
13 best you could?

14 A. Yes.

15 MR. POHL: Your Honor, I'd admit 28, which is the  
16 transcript.

17 THE COURT: All right. It's admitted. I think a  
18 portion of it had been previously admitted.

19 MR. POHL: Had been admitted yesterday. I now want to  
20 11:27AM move it in full. Thank you.

21 (Exhibit No. 28 received into evidence.)

22 Q. All right.

23 Casper: "Hey, dude, turn off the cell phones, Homies.  
24 Okay, so let's begin. Pay attention, dudes. We're going to  
25 discuss the problems, homeboys. To begin with, if someone

1 calls, it's not necessary to keep talking on the phone. The  
2 less we talk about the same subject, the better. So we will  
3 make one single call. The person calls you and tells you at  
4 what time to come and go and that's all.

5 We already know at what time it is. Then we have a  
6 problem with this. You know what you're getting."

7 Master: "Yes."

8 Casper: "'This dude is getting the beating, dudes.  
9 We had ordered him to be on the wagon and he failed, and as you  
10 know, dudes, so I don't know what decisions you will make after  
11 you give this dude the beating. If he will continue the same  
12 or what, but we will decide after the beating, we will talk  
13 about that subject because I will go over point by point, you  
14 know.

15 Master, you also have a beating, dude. The dude  
16 sentenced you with that for disappearing. A fucking lot of  
17 time that we hadn't heard from you, doggie. Whenever one is  
18 out of a touch, doggie, for more than a month, two months,  
19 dude, then you fucked up.

11:28AM 20 Master: "Yeah, but if the work doesn't allow me, and  
21 I spend my time in the streets of Somerville."

22 Casper: "Look, Master, the thing is this.  
23 Communication with the clique, that's what we're interested in,  
24 that we decided."

25 Master: "Well, don't have everyone's telephone number

1 and they have my number, too."

2 Casper: "That is your mistake. You're supposed to  
3 have it. You're the one getting the beatings, and you are the  
4 one that is supposed to keep calling, dog. You were told about  
5 that beating two meetings ago. We were still trying to contact  
6 you. You know how I contacted you? Through Pantera. We  
7 hadn't heard from you at all, and your old number was  
8 disconnected. You hadn't given us your new number."

9 Before I go on, who's Pantera?

11:29AM 10 A. He's the dude from the Everetts.

11 Q. He's in MS-13?

12 A. Yes, he was a leader.

13 Q. In the Everett clique?

14 A. Yes.

15 Q. Not yours?

16 A. No, in the Everetts.

17 Q. Okay. Master continues on, and if we could turn to page  
18 3.

19 "So there it is. This is the issue. So, let's carry  
11:30AM 20 out the beating and then continue discussing other subjects  
21 that we have to take care of now. You go first Tigre into the  
22 center, Negro, Beto. Do it, Playa."

23 All right. So do you remember, you were present at  
24 this meeting, correct?

25 A. Yes.

1 Q. And do you remember -- so we've heard talk about two  
2 different people getting beaten, right?

3 A. Yes.

4 Q. And who were the two people getting beaten?

5 A. Tigre and Master.

6 Q. Okay. Why is Tigre being beaten?

7 A. Because he had been put on the wagon, so he wasn't allowed  
8 to drink alcohol and he started drinking, and that's why we  
9 were going to correct him for disrespecting the clique.

11:31AM 10 Q. Why was Master being beaten?

11 A. Because it had been a while that Master had disappeared  
12 and we hadn't heard from him and he wasn't checking in with the  
13 clique.

14 Q. All right. What happens after this introduction? Where  
15 do you and the other members of the clique go?

16 A. I don't understand.

17 Q. Does the beating happen?

18 A. Yes.

19 Q. Where do you do the beating?

11:32AM 20 A. We were outside of the garage, and all the dudes make a  
21 circle when we were at the meeting, and so then the runner says  
22 who goes first, who they're going to correct, and the runner  
23 says who is going to do the beating of the person that's going  
24 to be beaten and tells the person that's going to be beaten to  
25 step into the center of the circle. And then he gets beaten



1 for 13 seconds.

2 MR. POHL: Jurors on page 3.

3 Casper: "Ready? 1."

4 CW-1: "Wait, wait, Bro."

5 Casper: "1."

6 CW-1: "Wait, man. Oh, man, exactly, man."

7 Casper: "1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13."

8 CW-1: "That's it, man, stand up, stand up man, with  
9 the boots the two guys. I'll break them in."

11:34AM 10 Casper: "Every mistake one makes, he will get a  
11 beating."

12 Tigre: "No problem. Yes, homie, but be careful where  
13 you hit."

14 CW-1: "Just cover your face, homie."

15 Casper: "Lobo, Checha, (unintelligible)."

16 Can you tell the jury -- were you present for this?

17 A. Yes.

18 Q. Can you tell the jury what happened when that beating  
19 occurred?

11:34AM 20 A. First Tigre got the beating, first he was corrected and  
21 then Master stepped into the same place where Tigre had been  
22 and also to be corrected.

23 Q. So on the transcript, it goes on.

24 Casper: "Ready, 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11,  
25 12, 13, stop. Stop now. Hey pick him up, dude. He has no

1 air. Pick him up. Come up here."

2 Muerto: "Jump. Jump."

3 That's the second beating?

4 A. Yes.

5 Q. And have you listened to a recording of that beating  
6 before your testimony here today?

7 A. Yes.

8 MR. POHL: Can I have 29, please.

9 Q. I'm going to play just a portion of this and see if you  
11:35AM 10 remember it.

11 MR. POHL: Just for the witness.

12 (Video played.)

13 Q. Do you recognize this, Mr. Hernandez Miguel?

14 A. Yes, since it was dark there, you can't see anything where  
15 we were.

16 Q. Okay. Was this when the beatings happened?

17 MR. MURPHY: Objection, your Honor.

18 THE COURT: Overruled.

19 A. Yes.

11:36AM 20 MR. POHL: Your Honor, I would offer 28 -- excuse me,  
21 29 and I'd ask for permission to publish it.

22 THE COURT: All right. 29, admitted.

23 (Exhibit No. 29 received into evidence.)

24 Q. I'm going to pause there for a second. You can't see it,  
25 it's dark. Who was that that got beaten, Mr. Hernandez Miguel?

1 A. Tigre.

2 (Video played.)

3 Q. Did you just hear the names Lobo and Checha?

4 A. Yes.

5 Q. What were Lobo and Checha doing -- did you see -- who  
6 administered the beating of Tigre?

7 A. Rebelde, Negro, and I don't remember the other one.

8 Q. How does the clique decide who is the person that does the  
9 beatings?

11:39AM 10 A. The person that decides that is the runner.

11 Q. Okay. So when you heard the names Lobo and Checha, after  
12 that first beating, do you know what was happening there?

13 A. Yes.

14 Q. What was happening?

15 A. The runner is giving the order that Lobo and Checha are  
16 the ones that are going to beat to correct Master. There has  
17 to be one more, but I don't remember who it was.

18 (Video played.)

19 MR. MURPHY: May we approach, your Honor?

11:42AM 20 THE COURT: All right.

21 (THE FOLLOWING OCCURRED AT SIDEBAR:)

22 THE COURT: Yes.

23 MR. MURPHY: Your Honor, two things. First I'd ask  
24 the Court to give an instruction that assault and battery  
25 assuming that that is what this is given the possibility of

1 consent is also not a racketeering act. That's Number 1.

2 Second, we're about to approach the area of the  
3 transcript where the interpretation was disputed, and I would  
4 ask the Court to give an instruction that the Court has  
5 previously instructed the jury that the transcripts are the  
6 evidence with respect to that the Court -- when we get to that  
7 point instruct the jury that they should consider all of the  
8 evidence they've had heard of the meeting in deciding what the  
9 transcripts, what weight to give about the government's  
10 interpretation of the transcripts, the government's version of  
11 the transcript.

12 THE COURT: All right. Does the government have a  
13 view on either one of those?

14 MS. LAWRENCE: I don't think it's necessary to  
15 instruct them assault is not a racketeering act. I don't think  
16 that's how the evidence is coming in.

17 THE COURT: My concern is -- the only reason I'm  
18 hesitating at all is -- because "assault" is a word with many  
19 meanings, including assault with intent to kill, I think which  
20 is a racketeering act, so I think I'm going to let it go for  
21 now. I take the point but -- and I will give the -- so I won't  
22 do that now.

23 I'll be prepared to talk about it in the final  
24 instructions to make clear, you know, a more simple assault or  
25 simple assault and battery is not a racketeering act, and

1 they're not charged with that, and I will give a reminder at  
2 the -- when we get to that part of the transcript.

3 MR. MURPHY: Thank you, your Honor.

4 (SIDEBAR CONFERENCE WAS CONCLUDED)

5 THE COURT: All right. Go ahead, Mr. Pohl.

6 MR. POHL: Can I have 31 for the witness, excuse me,  
7 31.1 and 31.2.

8 Q. Do you see that picture, Mr. Hernandez Miguel?

9 THE COURT: You can move the screen.

11:45AM 10 THE INTERPRETER: Not really.

11 THE COURT: Oh, you can't, okay.

12 A. Oh, yes. I can see it now.

13 Q. Do you recognize that person?

14 A. That's Lobo.

15 Q. And .2. Do you recognize that person?

16 A. Playa.

17 Q. Were Lobo and Playa present when Master and Tigre were  
18 beaten?

19 A. Yes.

11:45AM 20 MR. POHL: I'd offer those, your Honor, and ask for  
21 permission to approach.

22 THE COURT: All right. They're admitted, 30.1 and  
23 30.2.

24 MR. POHL: Thank you.

25 (Exhibit No. 30.1 and 30.2 received into evidence.)

1 Q. Who's that?

2 A. Lobo.

3 Q. .2?

4 A. Playa.

5 Q. All right.

6 MR. POHL: I'm going to turn back to the transcript,  
7 ladies and gentlemen, on tab 28. If you could go to the middle  
8 of page 4.

9 THE COURT: Before we do another reading, let me  
11:46AM 10 remind you, ladies and gentlemen, that this is the evidence put  
11 on by the government as to what these transcripts -- or what  
12 the conversations were translated into English, and there may  
13 be disputes about either who was speaking or whether the  
14 translation is accurate, and you're to consider all of the  
15 evidence, whatever that evidence is, and you are the ones who  
16 make the determination if there's a dispute as to who the  
17 speaker is or what the word means or how to resolve that.

18 Go ahead, Mr. Pohl.

19 MR. POHL: Thank you very much, your Honor.

11:47AM 20 Q. The middle of page 4, there's a quote from Casper:

21 The problem is that we didn't reach an agreement with  
22 them, dude."

23 Actually, I should begin with the sentence above.

24 Checha: "What about the issue from the thing down  
25 below?"

1           Then Casper: "The problem is that we didn't reach an  
2       agreement with them, dude. They kept wanting to make decisions  
3       for up here and they can't be because nobody is going to pilot  
4       us here without knowing what type of car they are driving, you  
5       know. I explained that we are fine, homeboy. There are many,  
6       there are many of us who have killed, homie and we deserve  
7       their respect and not to have them trying to pilot us. We are  
8       established here, and we are the ones who have to make our own  
9       decisions, not them down below, so we are out of the program  
11:48AM 10      right now."

11           "So what are we going to do now," says Master.

12           Excuse me, Master.

13           Master: "Another thing is that talking here with all  
14       the cliques about how many cliques are there, about six cliques  
15       here in Boston. So if we all agreed, we could set up a  
16       program."

17           Casper: "We already did that, dude. We tried to  
18       reach an agreement with the cliques there. There's that  
19       homeboy Playa who is a witness to that. They said that yes,  
11:48AM 20      that we will establish our own rules up here. The thing is  
21       that when they are start getting pissed off down there, those  
22       rages down there make the dudes up here change their minds, and  
23       there are a lot of cliques, dude, with guys that are here of  
24       Enfermos that start here with the therapy from down there and  
25       change their minds. We had an argument with Crazy about that.

1 I argued with him, homeboy. So the other day I met with the  
2 TLS homeboys, I met with the Psychos, dude, I met with the  
3 dudes from here. What's their name, TLS, psychos."

4 Playa: "Everetts."

5 Casper: "Yes, Everetts. We didn't reach an  
6 agreement. So yeah the dudes -- I don't know how their mind  
7 works, dude, because here in this circle they say, yes, that's  
8 good. We'll do it like that. In the end from down below, they  
9 change how they think. You must know how the therapy down  
11:49AM 10 below is, so that's why we haven't come to an exact firm point  
11 that we are going to be with them that way."

12 All right. Mr. Hernandez Miguel, you were present for  
13 this conversation, correct?

14 A. Yes.

15 Q. All right. So, what was the Eastside clique talking about  
16 here concerning the East Coast Program?

17 A. It's saying that the clique isn't going to remain in the  
18 program any longer.

19 Q. And I think you testified earlier that MS-13 has many  
11:50AM 20 programs?

21 A. Yes.

22 Q. And have you ever heard of their word "Hollywood"?

23 A. Yes.

24 Q. Okay. And specifically in connection with MS-13, does  
25 that word mean anything to you?



1 A. Yes.

2 Q. What does it mean to you in connection with MS-13?

3 A. The Hollywood clique has its own program.

4 Q. Are there other programs that you know as a member of  
5 MS-13?

6 A. I've also heard of the L.A. program.

7 MR. POHL: All right. Jurors, can I ask you to turn  
8 to page 6. Thank you.

9 Q. At the bottom of page 6 begins:

11:51AM 10 Casper: "Hey, Lobo."

11 Lobo: "Yes."

12 Casper: "The thing about the gun, homie, the dudes  
13 told me that you're giving it back and that the homies want it  
14 with the clip just as it was when you lost it."

15 Muerto: "In my opinion, it would be better if he  
16 keeps that gun and get a good gun instead for clique because  
17 that gun you knew that it didn't work and you brought it like  
18 that just to say you brought something."

19 Lobo: "No, because I might get a clip."

11:52AM 20 Muerto: "But how much does the clip cost? We were  
21 researching that the other day. It costs about \$300 just for  
22 the clip."

23 Tigre: "It would be better to get a different gun."

24 Muerto: "And you don't know if that thing works.

25 What if you buy a chifle and the thing doesn't work?"

1 Lobo: "Will you give me time to look for it?"

2 Muerto: "Yes, but pay attention. How can you bring a  
3 gun with a thing like that?"

4 Casper: "Try to get it as quickly as possible because  
5 the dudes need it, homebody."

6 Lobo: "I'll try to find one as quickly as possible."

7 Can you explain that -- what did they mean that Lobo  
8 had to bring another gun, what did they mean by that?

9 MR. IOVIENO: Objection, your Honor.

11:53AM 10 THE COURT: Sustained. Again, he can talk about his  
11 understanding, he can say what was said, and he can talk about  
12 his understanding of what was said, but he can't say what  
13 somebody meant when they said something.

14 Q. So Mr. Hernandez Miguel, did -- after Lobo was arrested  
15 with the gun, did he replace it?

16 A. Yes.

17 Q. Okay. What did he replace it with?

18 A. With another 9 millimeter, but the problem was it had no  
19 clip. So why I said there why -- how could you bring a gun  
11:53AM 20 without a clip for the gun --

21 THE INTERPRETER: For the clique, I'm sorry.

22 A. To bring a gun like that to the clique was a disrespecting  
23 of the clique, and that he had to also get the clip.

24 Q. I think you talked about Hollywood and the Hollywood  
25 Program. Did you and the members of the Eastside clique talk

1 about joining the Hollywood program?

2 MR. MURPHY: Objection, your Honor, time frame.

3 THE COURT: Why don't you put a time frame on it.

4 Q. Mr. Hernandez Miguel, this transcript, this conversation,  
5 was from October 24, 2015. Was there a time after that  
6 conversation but before you were arrested that you talked about  
7 joining another MS-13 program?

8 A. Yes.

9 Q. Okay. What MS-13 program did you talk about joining?

11:55AM 10 A. To the Hollywoods.

11 Q. And when did you talk about that? Excuse me, where did  
12 you talk about that?

13 A. At the meeting we talked about that.

14 Q. Okay. At the garage?

15 A. Yes.

16 Q. Who was present for that meeting?

17 A. Casper, Playa, Lobo, Checha, myself, Pelon, Brujo, Duke,  
18 and others I don't recall.

19 Q. I think you identified -- can we have

11:56AM 20 Exhibit Number -- this is Exhibit 9 that's in evidence. Who is  
21 that?

22 A. Animal.

23 Q. Do you remember when you met Animal?

24 A. Yes.

25 Q. When was that?

1 A. One day I spoke to Animal because he had gone to  
2 New Jersey.

3 Q. Okay. How did you speak to him?

4 A. Over the phone.

5 Q. Okay. And do you remember when the first time you met him  
6 was? I don't mean the exact day, but how you met him, where  
7 that was?

8 A. I don't remember.

9 Q. Okay. Can we -- I'm going to play you what's been  
11:57AM 10 previously admitted into evidence as 104.

11 (Video played.)

12 Q. I'll just pause it there. Do you know who that person is  
13 in the front, in the passenger seat?

14 A. Yes.

15 Q. Who is that?

16 A. Animal.

17 Q. Okay. And did you review this recording prior to your  
18 testimony?

19 A. Yes.

11:58AM 20 Q. And did you go through the same process of describing the  
21 speakers that you've testified to previously?

22 A. Yes.

23 Q. And besides Animal, do you remember whether there was  
24 somebody else in the car that spoke?

25 A. Yes.

1 Q. Do you remember who that was?

2 A. It was -- Pelon was there and David.

3 Q. Okay. Who's David?

4 A. He was one that was with Animal.

5 Q. What do you mean with Animal?

6 A. Animal went around with about three kids. They were  
7 always with David.

8 THE INTERPRETER: Excuse me, they were always with  
9 Animal.

11:59AM 10 A. And they were always out looking for chavalas.

11 MR. MURPHY: Objection, your Honor, may that be  
12 stricken?

13 THE COURT: All right. The last phrase "they were  
14 always out looking" will be struck.

15 MR. POHL: Your Honor, I believe that transcript 103  
16 had already been admitted de bene. I'd move it now formally  
17 for all purposes.

18 THE COURT: All right. It's admitted, 103.

19 (Exhibit No. 103 received into evidence.)

12:00PM 20 THE COURT: Does it make sense to take our break now?

21 THE CLERK: All rise.

22 (A recess was taken.)

23 THE CLERK: All rise for the jury.

24 (JURORS ENTERED THE COURTROOM.)

25 THE CLERK: Thank you. You may be seated. Court is

1 now back in session.

2 THE COURT: Mr. Pohl.

3 MR. POHL: Thank you, your Honor.

4 This is for the witness only at this time. Thank you.

5 I'm sorry, I take it back. 107 is in evidence. Can we play

6 107.

7 (Video played.)

8 MR. LOPEZ: I don't know that that was admitted

9 yesterday.

12:15PM 10 THE CLERK: I have 107 admitted actually on

11 February 2nd.

12 MR. LOPEZ: Okay, my mistake.

13 Q. All right. Mr. Hernandez Miguel, did you listen to that

14 recording before your testimony here today?

15 A. Yes.

16 Q. And had you gone through the process of reviewing that

17 recording with the interpreter and the agents in the way you

18 previously testified?

19 A. Yes.

12:17PM 20 Q. Do you recognize the voices on that recording?

21 A. Yes.

22 Q. Who was speaking on that recording?

23 A. Pelon, Casper, and Animal.

24 MR. POHL: Your Honor, as before I think 107 had

25 previously been admitted de bene, I'd move it now. Excuse me,

1 106.

2 THE COURT: Wait, I'm sorry.

3 MR. POHL: 106 is the transcript, 107 is the  
4 recording. I'd move 106 into evidence. I'm sorry, Lisa.

5 THE COURT: Okay. All right. 106 is admitted.

6 (Exhibit No. 106 received into evidence.)

7 THE COURT: Go ahead.

8 Q. Putting up what's been marked as 108, do you recognize  
9 that photograph?

12:18PM 10 A. Yes.

11 Q. Who is that?

12 A. Casper.

13 Q. You said before the break that Animal was in New Jersey?

14 A. Yes.

15 Q. How do you know Animal was in New Jersey?

16 A. I spoke to him.

17 Q. Okay. Did you ever -- do you know why he was in  
18 New Jersey, from your conversations with Animal, why he was in  
19 New Jersey?

12:19PM 20 A. Yes.

21 Q. Why was he in New Jersey?

22 A. Because he had committed a murder in East Boston.

23 Q. When you spoke to Animal, did you know what clique he was  
24 with at the time he committed the murder?

25 A. Yes.

1 Q. What clique was that?

2 A. With the Everett locos.

3 Q. Okay. And do you know from your conversations with Animal  
4 why he went to New Jersey after the murder?

5 A. Yes.

6 Q. Why was that?

7 A. Because since he had committed the homicide, Animal said  
8 that all chavalas knew him and so the Everetts took him to  
9 New Jersey.

12:21PM 10 Q. Do you know what happened to Animal -- well, did you ever  
11 see Animal in New Jersey?

12 A. Yes.

13 Q. Okay. When did you see Animal in New Jersey?

14 A. Myself and Pelon went to pick Animal up in New Jersey.

15 Q. Okay. Why did you and Pelon go to New Jersey to pick up  
16 Animal?

17 A. Because Animal told me that he had spoken with Casper to  
18 ask him if he would allow him to run with the Eastside clique.

19 Q. And did Animal tell you what Casper said?

12:21PM 20 A. That he needed to come back to Boston to get to know the  
21 dudes in the clique and then if he liked how the vibe was in  
22 the clique, then he could say yes.

23 Q. So is that why you went to New Jersey?

24 A. Yes.

25 Q. Okay. Do you remember where you went in New Jersey?



1 A. I don't remember.

2 Q. Okay. What happened when you got to New Jersey?

3 A. We went, we got to New Jersey to Animal's house and came  
4 back to Boston.

5 Q. Okay. Did Animal talk about the murder on the way -- that  
6 he had committed on the way back to Boston?

7 THE INTERPRETER: Can you repeat the last part,  
8 please.

9 Q. I've lost my voice, excuse me. Did Animal talk about the  
12:23PM 10 murder that he committed as you were driving him back from  
11 New Jersey to Boston?

12 A. Yes.

13 Q. What did Animal tell you about the murder he committed in  
14 East Boston?

15 A. That he had done it.

16 Q. Okay. Did he tell you where it had happened?

17 A. Yes.

18 Q. Where was that?

19 A. On Trenton Street.

12:23PM 20 Q. Okay. And did he tell you anything about sort of how the  
21 murder had been committed?

22 A. Yes.

23 Q. What did he tell you?

24 A. That Animal, David, and others were hanging out at a house  
25 where they used to hang out in Everett and then they said that

1 they were going to go out and look for chavalas.

2 Q. Can I stop you right there? I think Ms. Huacuja said that  
3 it was a house that they used to hang out in an Everett. Is  
4 that right?

5 A. Sorry, of the Everett clique.

6 THE INTERPRETER: The interpreter misstated.

7 Q. It was a house where the Everett clique used to hang out?

8 A. Yes.

9 Q. And where was that house that the Everett clique used to  
10 hang out in?  
12:24PM

11 A. On White Street near the East Boston.

12 Q. Okay. All right. So they were hanging out at the Everett  
13 house on White Street in East Boston, then what happened?

14 A. They said they were going to walk and look for chavalas.  
15 Animal said he had a knife on him, and as they were walking  
16 down the street, they decided to divide and part of them go one  
17 way and the other part go a different way.

18 Animal was with David, and he said that the part where  
19 he went, they saw two chavalas walking, and Animal said that he  
12:25PM 20 already knew them and that they were chavalas. So he said that  
21 he crossed the street to the side where the chavalas were  
22 walking and that he flashed the MS signs, and that both of them  
23 took off running.

24 One went into a laundromat, and the other one he said  
25 that he caught him, and when he caught him, the two of them

1 stood to fight, and Animal stabbed him with a knife. He said  
2 he stabbed him about three times, something like that, and that  
3 he saw when the chavala starting falling to the ground and he  
4 would try to stand up and he kept bending over because he was  
5 bleeding a lot, a lot of blood, and the chavala said something  
6 to him, he said, something to the effect of you'll be sorry.

7 Q. After you brought Animal back from New Jersey, did you and  
8 the members of the Eastside clique spend time with him?

9 A. Yes.

12:27PM 10 Q. About how much time -- well, you remember when you were  
11 arrested, right?

12 A. Yes.

13 Q. Maybe not the exact date, but how long had you been  
14 spending time with Animal up until the point in time in which  
15 you were arrested?

16 A. Approximately one month or a month and a half.

17 Q. Okay. And did you spend time with him?

18 A. Yes.

19 Q. What about other members of the Eastside clique?

12:28PM 20 A. Also.

21 Q. Okay. Like who?

22 A. Well, Vincentino since Animal didn't have a house to live  
23 in, we spoke to Vincentino to give him a place to stay, and we  
24 started bringing him over to where the dudes were hanging out  
25 so that he could start getting to know the Eastside members.

1 Q. I think you testified earlier that Animal had a couple  
2 people that hung around with him, correct?

3 A. Yes.

4 Q. Do you remember their names?

5 A. I know there was one that was called Luis, David and about  
6 two more that I don't remember.

7 Q. Okay. When you hung around with Animal, did you see  
8 David, Luis, the other two friends of Animal's that you  
9 described?

12:29PM 10 A. Yes, I did see them but not much.

11 Q. Did you and the other -- did you discuss with members of  
12 the Eastside clique whether to make Animal a homeboy in your  
13 clique?

14 A. I didn't understand the question.

15 Q. Sure. Well, let me -- was Animal made a homeboy in your  
16 clique?

17 A. Yes.

18 Q. Was the decision to make him a homeboy something that you  
19 discussed with other members of the Eastside clique?

12:30PM 20 A. Yes.

21 Q. Okay. Who?

22 A. The runners and the clique.

23 Q. What about you, did you want Animal to become a member of  
24 the Eastside clique?

25 A. Yes.

1 Q. Was there anything -- did you have any conversations with  
2 Animal after you brought him back from New Jersey concerning  
3 any violent crimes that he committed back up here in Boston?

4 A. Yes.

5 Q. Did Animal talk to you about that?

6 A. Yes.

7 Q. Okay. What did he tell you?

8 A. That he had also committed an attempted murder in Chelsea.

9 Q. Did he tell you who he did that with?

12:32PM 10 A. Yes.

11 Q. With who?

12 A. With Brujo.

13 Q. Okay. What did he tell you about it?

14 A. That one day they were at Dondeney's house in Everett and  
15 that they went to Chelsea in a van that belongs to someone  
16 named Mercho. It was Animal and about three others, and there  
17 was a girl called Rina and that they had committed an attempted  
18 murder near a restaurant called Santa Negro. He said that they  
19 were in the van when they saw the boys walking and they knew  
12:33PM 20 them already well.

21 So they told Muerto to stop the van, and they jumped  
22 out of the car. It was Brujo, Animal, and the other two were  
23 the ones that would hang out with Animal, and he said that they  
24 started following the chavalas and one tried to run towards the  
25 park and they grabbed him there and Brujo said that he stabbed

1 him with a knife.

2 Q. Did you talk about the fact that he had done that stabbing  
3 with other members of the Eastside clique?

4 A. Yes.

5 Q. Did you discuss that stabbing when you were discussing  
6 whether to make Animal a member?

7 A. Brujo spoke about that.

8 Q. Okay. And what did Brujo say?

9 A. That they had grabbed some chavalas in Chelsea, he and  
10 Animal, and that Animal had balls.

11 THE COURT: I'm sorry, he had said that Muerto was  
12 driving the van? Is there a different Muerto?

13 THE WITNESS: Mercho.

14 THE COURT: Mercho.

15 THE INTERPRETER: It's M-e-r-c-h-o.

16 THE COURT: Thank you.

17 Q. After those conversations, did Eastside jump Animal into  
18 the clique?

19 A. Yes.

12:35PM 20 Q. So at the time he committed the murder, Animal was in the  
21 Everetts?

22 A. Yes.

23 Q. And you spoke with him after he committed the murder?

24 A. When he was in New Jersey, I spoke with him.

25 Q. Yes, right. Did Animal tell you why he was not jumped

1 into the Everett clique?

2 A. Yes.

3 Q. Why was that?

4 A. Because when Animal got to Boston, he said that he didn't  
5 know dudes from MS-13, so he started hanging with some 18s, and  
6 that one day he was walking with some 18s from Chelsea to East  
7 Boston and that the 18s had Animal beat some dudes from the  
8 Everetts. That's why the Everetts didn't want to jump Animal  
9 because first they had to resolve that problem.

12:37PM 10 Q. They weren't sure he was really MS?

11 MR. MURPHY: Objection, your Honor.

12 THE COURT: Sustained.

13 Q. All right. After the stabbing that you've talked about  
14 with Animal and Brujo, was Animal jumped into the Eastside  
15 clique?

16 A. Yes.

17 Q. Were you present for that jump-in?

18 A. Yes.

19 Q. Who else was at the jump-in?

12:37PM 20 A. Casper, Playa, Brujo, Vago, Negro and others. I don't  
21 remember.

22 MR. POHL: Can I have 32.3. For the witness only,  
23 Madam Clerk.

24 Q. This goes on for another minute or two, Mr. Hernandez  
25 Miguel, but as I'm playing this, do you remember this?

1 A. Yes.

2 Q. Where is this?

3 A. That's at the garage in Everett.

4 Q. Okay. Do you remember what -- is it fair to say these are  
5 parts of a longer video?

6 A. Yes.

7 Q. Do you remember the day that this meeting happened?

8 A. Yes.

9 Q. What happened on that day?

12:39PM 10 THE INTERPRETER: I'm sorry?

11 Q. What happened on that day;

12 A. It was to jump Animal in.

13 MR. POHL: Your Honor, I would offer 32.3 and ask to  
14 publish it to the jury.

15 THE COURT: All right. It's admitted, 32.3.

16 (Exhibit No. 32.3 received into evidence.)

17 Q. Who is that?

18 A. What's the question?

19 Q. Were you watching the video just then?

12:40PM 20 A. Yes.

21 Q. Who was that?

22 A. Lobo.

23 (Video played.)

24 Q. Who was that?

25 A. Playa and Vincentino was there with a white baseball cap.



1 (Video played.)

2 Q. Who is that?

3 A. Brujo.

4 (Video played.)

5 Q. There were a couple of people in that section of the  
6 video, Mr. Hernandez Miguel. Did you recognize them?

7 A. Yes.

8 Q. Who was there?

9 A. Casper and Checha.

12:42PM 10 (Video played.)

11 Q. Who was that?

12 A. That was Casper and Caballo.

13 MR. POHL: Can I have 33.1 through 5 for the witness.

14 Q. I'm going to show you a series of pictures quickly,  
15 Mr. Hernandez Miguel. Do you recognize these?

16 A. Yes.

17 Q. Who is that?

18 A. Casper.

19 Q. 2, who is that?

12:43PM 20 A. Playa and Vincentino.

21 Q. And just to be clear, Playa is where?

22 A. In the corner with a black baseball cap. Vincentino is  
23 wearing the white baseball cap.

24 Q. 3, who is that?

25 A. Lobo.

1 Q. 4, who is that in the knit cap?

2 A. That's Brujo.

3 Q. 5, who is that?

4 A. Checha is wearing the yellow sweater.

5 MR. POHL: Your Honor, I'd offer these and ask to  
6 quickly punish them.

7 THE COURT: 33.1 through 33.5 are admitted.

8 (Exhibit No. 33.1 through 33.5 received into  
9 evidence.)

12:44PM 10 Q. 33.1, who is that?

11 A. Casper.

12 Q. Who is that in the black hat?

13 A. Playa.

14 Q. Who is that in the white shirt?

15 A. Lobo.

16 Q. Who is that in the knit cap?

17 A. Brujo.

18 Q. Who is that in the yellow sweatshirt?

19 A. Checha.

12:44PM 20 Q. Were you present for the actual jump-in of Animal in the  
21 garage that night?

22 A. Yes.

23 Q. Do you remember who was selected to beat Animal in?

24 A. Yes.

25 Q. Who was that?

1 A. Vago and Brujo and I don't remember the other one.

2 Q. And do you remember who selected the people to beat Animal  
3 in?

4 A. Yes.

5 Q. Who was that?

6 A. Casper.

7 Q. Why did Casper select him?

8 A. Because he's the runner and so he's the one that decides  
9 who is going to jump the person who is coming in, who is going  
10 to jump him in. Only runners can decide that.

12:45PM

11 MR. POHL: Can I have 32.2.

12 Q. Mr. Hernandez Miguel, do you remember that night, the  
13 night that Animal got jumped in?

14 A. Yes.

15 Q. Do you remember who counted for the beating that night?

16 A. Yes.

17 Q. Who was that?

18 A. Playa.

19 MR. POHL: I'm going to ask for permission to Play  
20 32.2.

12:46PM

21 THE COURT: Is it in?

22 MR. POHL: Yes, it's in.

23 THE COURT: All right. Go ahead.

24 (Video played.)

25 Q. All right. What are we seeing here?

1 A. Animal is standing in the foreground, and behind him is  
2 Vago in what appears to be a white sweater.

3 (Video played.)

4 Q. Okay. Just so we're clear, we heard counting, "Uno, dos  
5 tres," who was that?

6 A. Playa.

7 (Video played.)

8 Q. Do you see that?

9 A. Yes.

12:48PM 10 Q. What was that?

11 A. He's flashing MS, Animal is flashing MS because he's happy  
12 to have been jumped into MS.

13 MR. POHL: Can I have 49.2.

14 Q. We talked about this a little bit at the very beginning of  
15 your testimony, Mr. Hernandez Miguel, but do you recognize this  
16 document?

17 A. Yes.

18 Q. And this is an agreement between the government and you,  
19 correct?

12:49PM 20 A. Yes.

21 Q. Okay. And under the terms of the agreement, in your own  
22 words, what are you required to do?

23 MR. MURPHY: Objection, your Honor.

24 THE COURT: We've been over this, haven't we?

25 Q. I want to ask you about a particular part of your

1 cooperation agreement. And do you remember -- Ms. Huacuja is  
2 going to read that to you to yourself.

3 Ms. Huacuja just read you that paragraph?

4 A. Yes.

5 Q. Part of the agreement that you signed, correct, is that  
6 you have to testify, correct?

7 A. Yes.

8 Q. And you have to testify truthfully, correct?

9 MR. MURPHY: Objection, your Honor.

12:52PM 10 THE COURT: I'll allow that.

11 A. Yes.

12 Q. Okay. And in exchange, the government has made promises  
13 to you, correct?

14 A. Yes.

15 Q. And one of those promises concerns this paragraph, right?  
16 Now Ms. Huacuja read it to you.

17 A. Yes.

18 Q. Do you understand what that paragraph means?

19 A. Yes.

12:53PM 20 Q. And in your own words, what does that paragraph mean to  
21 you?

22 A. Well, what I understand from that paragraph is that if the  
23 information that I'm giving is correct, because what the  
24 government has asked of me is that I tell the truth, and that's  
25 what I have done.

1 Q. Okay. Let me ask you this question. As a result of your  
2 testifying here today, what consequences do you believe you  
3 will face from MS-13?

4 MR. IOVIENO: Objection.

5 THE COURT: I will allow that. It's based on his  
6 understanding, obviously.

7 THE INTERPRETER: Can you repeat the question, please?

8 MR. POHL: Sure.

9 Q. As a result of your testimony, what do you think MS-13  
10 will do to you?  
12:54PM

11 MR. LOPEZ: Objection, your Honor.

12 MR. IOVIENO: Objection.

13 THE COURT: Hold on. I'll allow it again. I will  
14 allow the witness to testify as to his understanding of  
15 possible consequences. Go ahead.

16 A. The rules of the Mara Salvatrucha is that when a member of  
17 the gang testifies against a different member, they will put a  
18 green light on him and kill him and also kill his family.

19 That's what MS-13 does when someone testifies, as I have done.

12:55PM 20 All I can say is that if something happens to my family, it  
21 will be their fault.

22 MR. IOVIENO: Objection.

23 MR. LOPEZ: Objection.

24 THE COURT: Strike that last sentence.

25 Mr. Pohl.

1 MR. POHL: Thank you, your Honor. Can I have one  
2 moment, your Honor?

3 THE COURT: Yes.

4 MR. POHL: Thank you, Mr. Hernandez Miguel.

5 THE COURT: It probably makes sense to break for the  
6 day. Let me talk to the lawyers at sidebar about the schedule.

7 (THE FOLLOWING OCCURRED AT SIDEBAR:)

8 THE COURT: All right. We'll allow some time today  
9 and took some long breaks. How are we doing?

12:57PM 10 MS. LAWRENCE: I think we anticipated a two-week case,  
11 I think we'd be presenting our case by the end of next week.

12 MR. MURPHY: Sorry, your Honor.

13 MS. LAWRENCE: I think we'd be finished with the  
14 presentation at the end of next week the way it's going.

15 THE COURT: All right. I'll let the jury go.  
16 Thank you.

17 (SIDEBAR CONFERENCE WAS CONCLUDED)

18 THE COURT: All right. Ladies and gentlemen, it looks  
19 like we are on track, the lawyers have assured me despite  
12:57PM 20 losing some time today, so let's try to start tomorrow morning  
21 promptly at nine. Remember all of my instructions not to talk  
22 about the case with each other or with anyone else and not to  
23 listen or read anything about the case, and we'll see you at  
24 9:00 sharp tomorrow.

25 THE CLERK: All rise.

1 (JURORS EXITED THE COURTROOM.)

2 THE COURT: Anything else for today? Okay, I'll see  
3 you at 8:30 tomorrow.

4 (Whereupon, the hearing was adjourned at 12:58 p.m.)

5 - - - -

6

7 C E R T I F I C A T E

8

9 UNITED STATES DISTRICT COURT )

10 DISTRICT OF MASSACHUSETTS ) ss.

11 CITY OF BOSTON )  
12

13 I do hereby certify that the foregoing transcript was  
14 recorded by me stenographically at the time and place aforesaid  
15 in Criminal Action No. 15-10338-FDS, UNITED STATES vs. HERZZON  
16 SANDOVAL, et al., and thereafter by me reduced to typewriting  
17 and is a true and accurate record of the proceedings.

18 Dated this 10th day of June, 2018.

19 s/s Valerie A. O'Hara

20

21 VALERIE A. O'HARA

22 OFFICIAL COURT REPORTER  
23  
24  
25